Vol. I

TRANSCRIPT OF RECORD

(Pages 1 to 804)

Supreme Court of the United States

OCTOBER TERM, 1946

No. 343

STATE OF NEW YORK, STATE OF DELAWARE, STATE OF INDIANA, ET AL., APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, INTERSTATE COMMERCE COMMISSION, STATE OF ALABAMA, ET AL.

No. 344

STATE OF MAINE, STATE OF NEW HAMPSHIRE, STATE OF VERMONT, ET AL., APPELLANTS,

vs.

THE UNITED STATES, OF AMERICA, INTERSTATE COMMERCE COMMISSION, ET AL.

No. 345

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, BEAVER, MEADE AND ENGLEWOOD RAILROAD COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, ET AL., APPELLANTS,

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FILED AUGUST 1, 1946.

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INDEX

	Original	Print
Record from D. C. U. S., Northern District of New York	1	1
Petition of plaintiffs, States of New York, Delaware, et al., in Civil No. 2311	2	1
Exhibit 1—Order of Commission instituting proceeding in Docket No. 28,300	56	55
Exhibit 2—Order of Commission instituting proceeding in Docket No. 28,310	58	57

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCT. 24, 1946.

—7298

	Original	Print
Record from D. C. U. S., Northern District of New York Continued		
Petition of plaintiffs, States of New York, Delaware, et al, in Civil No. 2311—Continued		
Exhibit 3—Order of Commission modifying order of investigation in Docket No. 28,300	59	59
Exhibit 4—Order of Commission modifying order of investigation in Docket No. 28,310	61	60
Exhibit 5—Report of Commission, May 15, 1945	63	62
Exhibit 6—Order of Commission in Docket No. 28,300, May 15, 1945	385	383
Exhibit 7—Petition of State of New York, et al. for reconsideration, reargument, etc	389	387
Exhibit 8—Petition of State of Ohio to reopen order, rehear and reconsider, etc	418	416
Exhibit 9—Petition of Public Service Commission of Wisconsin for reconsideration and reargument	427	425
Exhibit 10—Amended order of Commission, July 25, 1945	431	429
Exhibit 11—Order of Commission postponing effective date of order of May 15, 1945, as amended	433	431
Exhibit 12—First supplemental report of Commission, Oct. 30, 1945	434	432
Exhibit 13—Order of Commission further amending order of May 15, 1945, as amended	481	479
Order calling assistance to constitute a special court	486	487
Order to show cause	487	487
Order granting Chicago and North Western Railway Company, et al., leave to intervene in Civil No. 2311	489	489
Amended petition of Chicago and North Western Railway Company, et al., for leave to intervene in Civil No. 2311	492	490
Petition of States of Kansas, Oklahoma, et al., for leave to intervene in Civil No. 2311	516	505
Acknowledgment by Interstate Commerce Commission of service of order to show cause	519	507
Motion and application of States of Alabama, Georgia, et al., and of Southern Governors' Committee for leave to intervene in Civil No. 2311	520	508
Intervention of Interstate Commerce Commission in Civil No. 2311	525	511
Petition of New England Governors for leave to intervene in Civil No. 2311	526	512
Affidavit of Floyd Chalfont	586	554
Gerrish Gassaway	587	555
Walter W. Bacon	590	557
George Mace	593	559
Mark A. Daly	595	560
M. P. Catherwood	597	561
Thomas E. Dewey	600	563

Record from D. C. U. S., Northern District of New York
Continued

	Original	Print
Affidavit of—Continued		
Charles E. Bell	606	567
Parker McCollester	623	577
H. C. Barron	652	598
Ford K. Edwards	819	753
Harvey P. Schneiber	821	754
Glenn F. Vivian	830	760
Raymond E. Baldwin	843	767
C. H. Bartels	846	769
Ora M. Enyart	848	770
William L. Fogleson	851	771
Maurice D. Collins	854	773
Elliott S. Moore	857	775
Cooper C. Clifton	860	777
O. F. Heslar	862	778
Affidavits on behalf of State of New Jersey	864	780
Affidavit of J. W. Barton	886	799
Robert L. Moulton	887	800
Maurice T. Otto	888	801
Andrew H. Brown	889	802
Acknowledgment by United States of service of order to show cause	890	804

[File endorsement omitted]

IN THE

District Court of the United States

FOR THE NORTHERN DISTRICT OF NEW YORK.

Civil No. 2311

THE STATES OF NEW YORK, DELAWARE, INDIANA, MARYLAND, MICHIGAN, NEW JERSEY, OHIO, WISCONSIN AND THE COMMONWEALTH OF PENNSYLVANIA,

Plaintiffs,

against

THE UNITED STATES OF AMERICA,

Defendant.

PETITION—Filed November 29, 1945

TO THE HONORABLE THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF NEW YORK:

Now come The States of New York, Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Wisconsin, and the Commonwealth of Pennsylvania, by their several Attorneys General and Assistant or Deputy Attorneys General, and present this their petition, and for their cause of action respectfully show:

I. Plaintiffs seek an order of this Court enjoining, setting aside and forever annulling a certain report and order of the Interstate Commerce Commission (hereinafter generally referred to as the Commission), dated May 15, 1945, as amended, and a supplemental report and order, dated October 30, 1945, in a proceeding which embraced two investigations instituted by the Commission and combined for hearing and decision, entitled, respectively,

Class Rate Investigation, 1939 and *Consolidated Freight Classification*, Docket Nos. 28300 and 28310 on the Commission's docket. Copies of the report and order of May 15, 1945 are annexed hereto and made parts of this petition as Exhibits 5 and 6. Copies of the supplemental report and order are annexed hereto as Exhibits 12 and 13 and are likewise made parts hereof.

II. Plaintiffs are sovereign states and bodies politic. They bring this action in their sovereign capacities on behalf of their citizens and communities and also as themselves shippers and receivers of freight transported by railroad upon which so-called class rates affected by the orders sought to be enjoined are charged.

III. Defendant is The United States of America.

IV. This action is brought under, and the jurisdiction of this Court rests upon the provisions of Acts of Congress approved June 18, 1910 (36 Stat. 539), March 3, 1911 (36 Stat. 1148), and October 22, 1913 (38 Stat. 219), Title 28, U. S. Code, Sections 41 and 43 to 48, inclusive, and also the general equity jurisdiction of this Court. The amount in controversy exceeds the sum of Three Thousand Dollars, exclusive of interest and costs.

V. The venue of this action is in this Court, pursuant to the statutes above referred to, because the orders of the Interstate Commerce Commission sought to be enjoined, set aside and annulled were made in a proceeding instituted by the Commission on its own motion and not upon the petition of any party, because the orders relate to and would affect rates and charges for transportation performed or to be performed by railroad within the territorial jurisdiction of this Court as well

as elsewhere, because plaintiff The State of New York was a party to the proceeding before the Commission, and because said plaintiff has its capital, and therefore its principal office, at Albany, New York, within the territorial jurisdiction of this Court.

VI. The proceeding in which the Commission made the reports and orders sought to be enjoined was instituted by it by two orders of investigation, dated July 29, 1939, copies of which are attached hereto as Exhibits 1 and 2, which were thereafter amended by two orders dated August 1, 1940, copies of which are attached hereto as Exhibits 3 and 4, all of which exhibits are made parts of this petition. Substantially all of the railroads of the country, including railroads engaged in transportation within the jurisdiction of this Court, were made respondents in said investigation.

VII. In the course of the development of railroad systems and railroad transportation, the country, for the purposes of railroad freight rates and certain other matters, has come to be divided into sections or so-called rate or classification "territories". The boundaries of these territories conform generally, but with exceptions, with the termini of the major railroad systems, so that each territory embraces the railroads which are chiefly competitive each with the other and are affected by common physical and other conditions. Official or Official Classification Territory, so-called, is roughly that portion of the United States north of the Ohio and Potomac Rivers and east of the western shore of Lake Michigan and extending diagonally to the western bank of the Mississippi River opposite Illinois; Southern or Southern Classification Territory is that section of the country roughly south of the Ohio and Potomac Rivers and east of the Mississippi; and Western Classification or Western Territory

includes the part of the country west of the Mississippi River and also part of Wisconsin. There are various subdivisions or sub-territories which are not important here. Plaintiffs are located in Official Territory, except that plaintiffs The States of Michigan and Wisconsin are partly in Official and partly in Western Territory.

VIII. Corresponding with the foregoing divisions of the country, the railroads of the country publish and maintain in tariff schedules filed with the Commission three major freight classifications, so-called, known respectively as the Official, Southern and Western Classifications. In these classifications many thousands of articles of freight are listed and are assigned to classes—for example, first class, second class, etc.—for the purpose of determining the freight rates to be charged for transportation by railroad. Then by other tariff schedules filed with the Commission the several railroads publish and maintain freight rates to be charged for the transportation of freight of each of the several classes between various points. These rates are known as the class rates. The Official Classification and the Official Territory class rates are published and maintained by and determine the charges of the railroads for the transportation of classified or class rate freight within Official Territory, as above described, in which plaintiffs are located. The Southern and Western Classifications and class rates, as their names indicate, determine charges for the transportation of class rate freight within Southern and Western Classification Territories. For purposes of publication, all three classifications are combined in one volume, called the Consolidated Freight Classification, with uniform rules, regulations and definitions of the various articles listed. However, the classifications or ratings to which many of the articles are assigned, are not uniform in the several classifications. For example, an article may be classified third class in the Official,

fourth class in the Southern, and fifth class in the Western Classifications. There is a greater degree of uniformity in the classifications of articles in the higher ratings than of articles in the lower ratings.

IX. In addition to the classifications and class rates, the various railroads in the several sections or rate territories publish, file and maintain tariff schedules providing numerous exceptions to the classifications. They also have filed and published a large number of tariff schedules naming rates for the transportation of specific or individual commodities between various points, which rates are commonly referred to as "commodity rates". As a general rule for transportation for which exception and commodity rates are published they supersede the class rates so that the classifications and class rates determine the charges for transportation only as to freight and for movements for which no exception or commodity rates are in effect.

X. Due to various factors, such as the characteristics and volumes of freight to be transported, the varying competitive conditions encountered and the influences and orders of different governmental authorities, the railroads in the several classification and class rate territories—Official, Southern and Western—have adopted and followed different theories and practices in establishing and maintaining their various rates. In Official Territory the transportation of a larger proportion of the total freight moving by railroad is made subject to class rates, as distinguished from exception and commodity rates, than is the case in Southern and Western territories. The class rates are charged principally for the transportation of manufactured articles. Many commodity rates, for the transportation of low-grade freight and raw materials, are higher mile for mile in Official Territory than the corresponding rates in Southern and Western territories, while the freight rates for the transportation of manufac-

tured articles, including the class rates, are generally lower mile for mile in Official than in Southern and Western territories. For the transportation of many articles for which the railroads in Official Territory charge class rates, the railroads in the South and West charge exception rates or commodity rates which are lower than the class rates in those territories and in some instances are as low as or lower than the class rates charged in Official Territory for the same distances. For transportation from one territory to another the railroads' tariffs specify which classifications control the ratings and the rates are in some instances computed to reflect the rate levels in each territory and in other instances are established independently and governed by competitive and other conditions affecting the through transportation.

XI. The class rates for the transportation of class rate freight within and between the several territories were prescribed as maximum reasonable rates by the Commission in various proceedings after extended investigations, and the present rates are the results of orders of the Commission.

XII. The orders of the Commission sought to be enjoined relate only to class rates and the classifications. By its orders in Docket No. 28300, Exhibits 1 and 3, the Commission instituted an investigation into the lawfulness of the present class rates for transportation between all points within that portion of the United States east of the Rocky Mountains, and the Commission indicated that the principal matters to be investigated pursuant to that order were whether or not there should be a uniform scale of class rates to be charged for transportation throughout the portion of the country described, or whether there should be several scales of class rates in different sections of the country and, if so, the relationships which should exist between them. By its orders in Docket No. 28310, Exhibits 2 and 4, the Commission instituted an

investigation into the lawfulness of the freight classifications in effect throughout the entire United States and indicated that the principal issues to be investigated were whether or not there should be a single uniform classification, or whether there should be different classifications and, in either event, what the different classifications and the ratings therein should be.

XIII. Prior to the entry of these orders of investigation, no complaint had been made to the Commission that the class rates for the transportation of class rate freight between points in Official Territory were unremunerative or unduly or unreasonably low or in violation of any provision of the Interstate Commerce Act. The governors of the states in Southern Territory several years prior thereto had formed a committee for the promotion of industrial development in the South and had conducted a vigorous and extensive campaign seeking to induce industries to locate in the South and to persuade manufacturing establishments located in Official Territory to move to the South. As one phase of this campaign, public addresses had been made and articles written, in which it had been asserted that the higher level of the class rates in Southern Territory and from the South to the North than in Official Territory was an obstacle to the industrial development of the South and to the efforts of the South to persuade industries to locate in Southern Territory rather than Official Territory. These articles generally failed to refer to the fact that the commodity rates and the rates for the transportation of inbound raw materials were generally lower in Southern Territory than in Official Territory. Several bills had been introduced into the Congress by representatives of the southern states, which bills, if enacted, would deprive the Commission of jurisdiction to prescribe class rates on the basis of evidence and would require that class rates be established on a uniform level regardless of the facts affecting the trans-

portation involved and the charges therefor, and regardless of the relative levels of the freight rates for the transportation of raw materials and other freight. It was indicated that these bills would be pressed for enactment if the Commission failed to take action. The atmosphere so created was described by the late Commissioner Eastman in his dissenting opinion in a companion proceeding brought by the governors of the southern states, *State of Alabama* v. *New York Central R. Co.*, 235 I. C. C. 255, as follows (p. 333):

> "The Commission is called upon to decide this case, on the record, after it has in effect been decided, in advance and without regard to the record, by many men in public life, of high and low degree, who have freely proclaimed their views on what they conceive to be the basic issues. Their thesis has been that the section of our country generally known as the South is our 'Economic Problem No. 1', because, among other things, it is low in industrial development, and that a major reason for this condition has been and is an unfair adjustment of freight rates which has favored the producers of the North and burdened those of the South. It has become a political issue. While, however, the South gave birth to the issue, public representatives of the West now cry out against like supposed oppression, and public representatives of the North or East, as it is variously called, have risen in defense of their section.
>
> "Under such conditions, it is not easy to decide the case without being influenced by emotional reactions, one way or the other, which should play no part in the decision."

It was in this atmosphere that the Commission entered its orders of investigation, conducted its investigation and issued its reports and orders involved in this suit.

XIV. Following the entry of the orders described in subdivisions VI and XII, Exhibits 1, 2, 3, and 4, a pre-

trial conference was held at Chicago, and thereafter public hearings were held by the Commission at St. Louis, Mo., Indianapolis, Ind., Columbus, O., and Washington, D. C., for the purpose of taking the testimony of interested parties. At these hearings the Commission was represented by counsel and statistical evidence of members of the Commission's staff was presented. The railroad respondents were represented and offered evidence. Plaintiffs and other states, public bodies, chambers of commerce and industries became parties to the investigation, as provided by the Commission's Rules of Procedure and the Interstate Commerce Act, appeared by their respective attorneys general, counsel or other representatives, and offered evidence. In all, some 5490 pages of testimony were taken and 233 statistical exhibits were offered and received in evidence. Except for the contention of certain motor truck interests that the charges of the railroads generally throughout the country for transporting freight in less-than-carload quantities were too low to enable the motor carriers to compete profitably with the railroads, there was not a single claim made by anyone and no evidence was offered to support a claim that the class rates for transportation in Official Territory were unremunerative, or unlawful because too low, or that they should be increased, or that even if a uniform level of class rates should be desirable, the public interest would be served if uniformity were accomplished by increasing the Official Territory rates.

XV. After the conclusion of the hearings, briefs were filed by the parties and oral argument was had before the Commission. For plaintiffs herein it was argued that because of the different conditions in the several classification territories, the different kinds and volumes of freight

transported in each of the territories, and the different theories and practices of the carriers in the establishment of their freight rates, with relatively lower freight rates in Southern Territory than in Official Territory for the transportation of raw materials and low-grade products, it could not fairly be concluded that the class rates were unlawful merely because not on a uniform level throughout the country; that there was no evidence to support a finding that the existence of different levels of class rates in the South and West and between the South and West and Official Territory and within Official Territory had prevented the free movement of freight, or had impeded or prevented the industrial development of the South or the location of industry in the South, or had caused substantial injury to the South or to southern or western shippers and receivers of freight; that computations offered in evidence on behalf of the Commission with respect to the average costs of transportation were made to indicate as great average costs for the transportation of all freight over railroads in Official Territory as over railroads in Southern Territory only if there were improperly excluded from Official Territory average the statistics of certain railroads in that territory commonly called the Pocahontas Lines; and that even if the average costs of transportation of all freight were approximately the same in Official Territory and in the South, still this did not constitute evidence that a difference in the levels of the class rates was unlawful so long as there were differences in the levels of commodity and exception rates in the two territories. And it was contended further on behalf of plaintiffs that since most of the evidence related to transportation and transportation conditions in 1939 with some figures and attempted adjustments designed to reflect conditions during the early war years, and since the termination of the war was cer-

tain to create entirely different conditions as to transportation costs, kinds and volumes of traffic, channels of movement and industrial and competitive factors than had previously existed, the evidence as a whole was obsolete and insufficient to support an order requiring a change in the class rates for the future. Neither in briefs nor in argument, was any contention made by any party (except for the claim of certain motor truck interests addressed to the less-than-carload class rates of the railroads throughout the country) that the class rates for transportation between points in Official Territory were unreasonable or unlawful because too low. Even those, including the spokesmen for the southern governors and the southwestern states, who contended that there should be a uniform level of class rates, made no contention that uniformity should be brought about by increasing the class rates in Official Territory and, in fact, opposed such a suggestion.

Contrary to its usual procedure in investigations of the magnitude and importance of this, the Commission did not cause its examiners to prepare and submit a proposed report and recommended findings and conclusions with regard to the lawfulness of the existing rate levels, to which findings and conclusions the parties might file exceptions, but, instead, after hearing oral argument the Commission took the proceeding under advisement forthwith.

XVI. Thereafter, on or about May 15, 1944, the Commission issued its report and order (Exhibits 5 and 6), with Commissioners Mahaffie and Patterson concurring only in part, and Commissioners Porter and Barnard filing dissenting opinions.

XVII. On the central issue whether the difference in levels of the class rates in the several territories injured

the shippers or industries in the South, or impeded the development of industries in the South, or restricted the free movement of freight, the Commission, at pages 615 to 619, found and summarized the evidence as follows (Italics added):

> "The testimony of shippers called on behalf of the Southern Governors' Conference respecting the payment of class rates may be summarized as follows:
>
> "*A manufacturer of washboards at Raleigh, N. C.*, ships washboards in less than carloads on class rates. In September 1941, a representative month, he made 42 less-than-carload shipments to official territory on which he paid total charges of $184.06. Charges on the official territory level would have been $15.14 less. One shipment was made to Dallas, Tex., on which he would have saved 77 cents at the official territory level. Twenty-five shipments were made to points in southern territory. Charges on the official territory level would have been $45.77 less than actually paid. The principal competitors are at Columbus, Ohio, and Saginaw, Mich., the latter with a branch factory at Memphis, Tenn. If the official territory level had applied not only from Raleigh, but also from Columbus to the South, the charges from Columbus would be reduced by greater amounts than from Raleigh. Application of the official territory level of rates on the September shipments to the North would have reduced his freight charges by 8 percent. Twenty-five percent of the shipments to the North were to Detroit, Mich., a short distance from Saginaw, where one of his chief competitors is located. *The business of the manufacturer who gave this testimony however, has increased substantially.*
>
> "*The operator of a tanning plant at Andrews, N. C.*, testified that he had recently taken over the tannery at that point, which had been out of operation for several years, and in May 1942, began tanning operations. *As of the date of the hearing, September 28, 1942, the company was beginning to make out-bound shipments of leather to some of the*

20 principal points to which leather moves, most of which are in official territory. While *most of the shipments will be in car-loads, on which both class and commodity rates apply,* some less-than-carload shipments are anticipated, on which the class rates will apply. Between May 22, 1942, and June 18, 1942, he shipped 9 carloads of green salted hides, 6 from New York, N. Y., 2 from Harrison, N. J., and 1 from Detroit, Mich., and 5 carloads of dry hides, 3 from New York, 1 from Brooklyn, N. Y., and 1 from Waverly, N. J., on which class rates applied. The total charges at the applicable class rates were $6,063.45, whereas the total charges at the official territory level would have been $4,504.63. Leather is usually sold f. o. b. tannery or warehouse. This company has experienced difficulty in selling and quoting prices competitive with tanneries able to ship at lower freight rates.

"Imported hides now move from the New York area to Andrews. Under present war conditions most steamers discharge at New York, but, in peacetime, cargoes of hides could be discharged at Norfolk or New Orleans, and this company might obtain imported hides through those ports. This company will also use domestic hides which will be obtained principally in Chicago, Ill., Detroit, Mich., and St. Louis, Mo. There are very few hides produced in the South. However, in *Schoen Bros., Inc.*, v. *Erie R. Co.*, 255 I. C. C. 501, 258 I. C. C. 161, we prescribed reasonable rates on green salted hides from certain points in Alabama, Georgia, and Florida, to Endicott, N. Y., and from Atlanta, Ga., to Boston, Mass. The four principal markets for finished leather are New York, St. Louis, Chicago, and Philadelphia.

"Quebracho extract, used in tanning, is imported. The differences in freight rates on this commodity are said to be more drastic than on hides and leather, but no exhibit was introduced showing these rates. *Chestnut extract, also used in tanning, is produced in the South and the freight rate is a very small cost factor.*

"*A shipper of wine at Atlanta* complained of the rates on wine from that point to official territory.

The witness knew little about rates, and an exhibit prepared by his traffic man was erroneous. The applicable rates to most of the points shown on the exhibit are combination rates, one factor of which are exception rates from Atlanta to border points. His principal competition comes from New York City, but he also operates a winery at Brooklyn, N. Y. His product is nationally advertised and he does a nation-wide business. *A larger plant has recently been constructed at Atlanta indicating that the business has made substantial progress at that point.*

"Testimony for a *manufacturer of macaroni products at Memphis, Tenn.*, was offered by the manager of the Memphis Freight Bureau. For example, from Memphis to Evansville, Ind., 301 miles, the rate on macaroni and noodles and spaghetti, in less than carloads, is 68 cents, whereas from Chicago, 284 miles, the rate is 48 cents, a difference in favor of Chicago of 20 cents. If both rates were made 50 percent of the eastern first-class scale they would be 49 cents and 48 cents, respectively, and the rate advantage of 20 cents which Chicago has would be reduced to 1 cent. *This shipper has never complained to the railroads about his rates, which are fourth class* (50 percent of first class) *in official territory* and, by exception, *class 50 in the South*, in less than carloads. In *Macaroni & Noodle Mfrs. of America* v. *Alabama G. S. R. Co.*, 50 I. C. C. 289, the fourth-class rating was found not shown to be unreasonable or unduly prejudicial for all territories. In the South, fourth class is 55 percent of first class. This shipper has competitors at Louisville, Ky., and New Orleans, La., and distributes his products throughout the South and to Kentucky and some Ohio River points.

"*Five other shippers who testified on behalf of the Southern Governors' Conference do not ship their products on class rates.* They testified with respect to furniture from Birmingham, Ala., glass bottles from Chattanooga, Tenn., cucumber pickles from Faison, N. C., peanut products from Columbus, Ga.,

and grading machinery from Taccoa, Ga., and Vicksburg, Miss.

"Present rates on *glass bottles from Chattanooga* to official territory are on a combination basis, using a commodity rate to Cincinnati, plus exception rates beyond. *Approximately 25 percent of the production of the shipper* who testified *is shipped to the North,* although he has only a 'limited amount of tonnage' to offer in that territory. His sales have also been extended to the West.

"The *pickle manufacturer* ships 25 per cent of his output of salt stock and brine pickles to the North, and the finished product to the North and South. *The applicable rates are truck-competitive rates and are lower than the normal official territory level of rates.* The witness's chief concern is that his present rates might be increased.

"*The shipper of peanut products ships them to all parts of the country,* except New England, *on rates lower than class rates.* The company purchases a million dollars' worth of peanuts annually and has annual sales of 5 million dollars.

"*The manufacturer of grading machinery ships his products all over the world.* His first plant in the East was at Peoria, Ill. *Later he established plants at Taccoa and Vicksburg. He made no complaint about his rates and testified that the plants were established in the South because of the many advantages in that territory.*

"Testimony with respect to shipper dissatisfaction with southern class rates was given by the secretary and manager of the Atlanta Freight Bureau, appearing for the southern governors, and by the commissioner of the Nashville Freight Bureau. The former introduced in evidence *an exhibit listing 14 groups of commodities,* the rates on which were claimed to have been detrimental to southern shippers. *Only 6 of the 14 move on class rates.* These are calendars, electric appliances, lead products, iron or steel tanks, cloths, and rags. The evidence shows that although *the calendar manufacturer* lost a contract to supply calen-

dars to an oil refinery in 1943 he *obtained a 1944 contract from the same company.* In *State of Alabama* v. *New York Central R. Co., supra,* we declined to disturb the existing basis of rates on certain electrical appliances, i. e., conduit outlet boxes, junction boxes, switch boxes, and outlet plates, and stated that the purchaser's familiarity with the manufacturer and with its products is generally controlling. It appears that *the rates on cloth and rags about which complaint was made were not class rates. The shipper of lead* at Atlanta ships his entire output to the South and *has never asked the southern railroads for competitive rates to the North. The same is true* with respect to *the shipper of iron and steel tanks. To the Ohio River* crossings, the Virginia cities, Chicago and Peoria, Ill., commodity *rates on iron and steel tanks substantially lower than the class rates apply.*

"The witness for the Nashville Freight Bureau criticized respondents' failure to reduce rates on steel automobile *truck bodies from Nashville* to Metuchen, N. J., but admitted that the Nashville shipper obtained *a contract for such truck bodies which provided for their purchase f. o. b. Nashville.* His other criticism on behalf of a particular shipper was of the failure of the railroads to reduce the rates on shell boxes from Nashville to all points in official territory. He stated that rates on the basis sought had been established to 13 destinations. This shipper had not obtained a contract for the boxes and does not produce them. There is one actual manufacturer of shell boxes at Nashville who is engaged in shipping the boxes."

XVIII. On the question whether the existing rates and the differences between the levels of the class rates in Official Territory and in Southern Territory have prevented the industrial development of the South and have caused injury to the South sufficient to sustain a finding of undue prejudice and preference in violation of Section 3 of the Act, the Commission found further, as follows (pp. 621-622):

Petition.

"In order to determine if the South is or is not growing industrially, statistics over a period of years must be examined. Unless otherwise stated, the years used are 1929 and 1939. The following facts are derived from the statistics examined:

"For the 10-year period, 1929 to 1939, the number of wage earners in manufacturing industries in the country as a whole decreased 11 percent; in official territory, 12 percent; and in New York State, 13 percent. There was an increase of 5 percent in the South.

"There was a 22-percent decrease in manufacturing wages for the entire country, 23-percent decrease in official territory, and 3-percent decrease in the South. Some southern States had an increase.

"The values of manufactured products for the entire country decreased 21 percent; in official territory, 25 percent; in New York State, 29 percent; and there was a 1-percent increase in the South. North Carolina had an increase of 8 percent.

"Value added by manufacture, for the United States as a whole, decreased 23 percent, 24 percent in official territory, 12 percent in the South, and in New York State, 33 percent. North Carolina had an increase of 7 percent.

"From 1930 to 1940, there was a greater decrease in agricultural employment in southern than in official territory; but manufacturing employment increased in the South and decreased in the North.

"In 1941, income payments for the United States were 111 percent of those in 1929, for official territory 100 percent, and for the South 128 percent.

"From 1930 to 1940, the number of gainfully occupied workers in manufacturing in official territory decreased from 70.5 percent to 69.4 percent of the country's total, but in the South, increased from 10 percent to 11.9 percent.

"During the period from 1929 to 1939, the number of wage earners in the canned fruit and vegetable industry in the South increased 68 percent, as compared with an increase of 28 percent in official territory.

"The number of wage earners in the cotton industry in 10 northern States decreased 45 percent,

as compared with an increase of 12 percent in 6 southern States.

"Value of cotton products decreased 55 percent in the northern States and 12 percent in the southern States, and the value added by manufacture decreased 48 percent in the North and increased 8 percent in the South.

"Manufacture of heating and cooking apparatus, except electric, during the 10-year period, increased in the South and decreased [the record erroneously reads 'increased'] in the North. There was an increase of 39 percent in the number of wage earners in the South, and a decrease of 21 percent in the North. Value added by manufacture increased 8 percent in the South and decreased 32 percent in the North.

"The number of wage earners in the furniture industry increased 18 percent in 6 southern States and decreased 33 percent in 12 northern States. Value added by manufacture decreased 43 percent in the northern States and less than 0.5 of one percent in the southern States.

"There are other branches of manufacturing that have progressed more rapidly in the South than in the North, but there are some in which, during the 10-year period, the industrial trend was not as favorable in the South as in the North. These include the manufacture of morticians' goods, certain flavoring extracts and sirups, and flour and grain-mill products.

"No specific instance was proved where an industry was not established in the South because of the class-rate level. However, in the nature of things this fact would be difficult to prove because of the many factors entering into the location of an industry.

"A witness for the southern interests was the editor of an industrial publication devoted to the cause of industrial development of the South and Southwest. Excerpts from copies of this publication in 1940, contain a statement by the southern governors that, 'In two years the volume of the South's manufactured products has increased approximately 35 percent and is now 2½ times the value of its agriculture output; during the same period the number of

manufacturing plants in the South increased by 803 as contrasted to a decline in the rest of the United States of 3190.' The publication contains many pages listing new industries that have located in the South, some of which are the largest in the country. They include plants manufacturing cigarettes, textiles, footwear, household furniture, paints, stoves, ranges, water heaters, tin cans, clothing, vegetables, drugs and medicines, flour, optical goods, and fluorescent lamps."

XIX. During the course of the hearings there were received in evidence testimony of and exhibits prepared and identified by witnesses for the Commission, the railroads, plaintiffs and others with regard to costs of transportation. There was no evidence as to the cost of transporting class rate freight in any territory or between any particular points. All of the testimony and exhibits related to attempted computations of average costs of transporting all freight, and did not indicate the costs of transporting any particular commodity or class of freight and disregarded the rates charged for their transportation. The Commission's witness, Dr. Ford K. Edwards, testified in part as follows, at page 3236 of the stenographic minutes:

"Q. (By Mr. McCollester) Now, if it should so happen, Dr. Edwards, that of freight having that average haul and that average loading per car in Eastern territory, some freight should produce revenue less than 11.8 cents per hundred pounds and other freight should produce revenue in excess of 11.8 cents per hundred pounds, the railroads would earn their costs, under cost level No. 2, if the average came out to be 11.8 cents per hundred pounds; is that correct?

A. Yes.

Q. Therefore, would you not agree, Doctor, that if it should appear that the average costs so computed for that length of haul and that loading in one section of the country were the same as in another, and

that some freight in one territory yielded lower revenue than in another territory, while other freight yielded a higher revenue, the fact that the costs were equal would not indicate that all of the rates would have to be equalized, on all classes of traffic, in order to yield cost, would it?

A. That is right. There might be a different distribution of the transportation burden, as between different commodities in different territories.

Q. And that is in effect what you mean, is it not, when you say, in a somewhat different connection, I believe on page 3 of your Exhibit No. 2, that if some service pays less, other service must pay more?

A. Yes."

Other evidence in the record, which was uncontradicted, showed that there is a wide variation in the kinds of freight transported in the several territories and that there are great differences in the rate structures and so-called distribution of the traffic burden in the several territories. All of the cost computations in evidence, although differing in theory and in the final figures produced thereby, were in agreement on one point: that the average cost of transportation over the railroads of Official Territory, including the so-called Pocahontas Lines, are less per unit of freight and distance than the average costs of transportation in Southern and Western territories, and it was only by excluding figures of the Pocahontas Lines in computing averages for Official Territory and by including figures for transportation in Kentucky in computing the average for Southern Territory that figures were produced for the cost of transportation in Official Territory as high as the figures for Southern Territory. In its report the Commission found in part, as follows (p. 591). (Italics added):

"*Summary.*—The various comparisons of territorial costs reviewed hereinabove show that there is

little significant difference in the cost of furnishing transportation in the South as compared to the East, excluding Pocahontas territory. The figures both for the year 1939 and the period 1930-39 indicate that, taken as a whole, the costs in the South are equal to or a little lower than those in the East. If the period 1937-41 is used, the costs in the South are substantially lower than those in the East.

"*If the Pocahontas territory is included with the East, the costs for the South, based on the year 1939, are between 3 and 6 percent above those for the East. This differential would be increased to something between 6 and 8 percent if the years 1930-1939 were used,* a period, including years of depression traffic. On the other hand, this differential would be eliminated if the 5-year period, 1937-41, were used. The unit costs of rendering transportation service in the South increase more rapidly with declining traffic volume and decrease more rapidly with increased traffic volume than is true for the East. On the basis of the 1939 figures, the costs for the East, including New England but excluding Pocahontas, are approximately the same as the costs for the South, excluding the State of Kentucky.

"*Comparisons based on the year 1939 and the period 1930-39 show the over-all cost of rendering transportation service in the western territory to be between 5 and 10 per cent higher than in the East, excluding the Pocahontas territory.* If the year 1941 were used, this difference would be reduced to 5 percent or less. *A comparison based on the inclusion of the Pocahontas territory with the eastern roads for the period 1930-39 shows a difference of 18 percent.* Based on the year 1939 the difference shrinks to approximately 15 percent. Based on the year 1941 it would be reduced to something in the neighborhood of 10 percent."

The so-called Pocahontas Lines are railroads in Official Territory for the purposes of class rates, and the Commission's orders herein would apply to the class rates to

be charged by them. To a considerable extent, transportation in Kentucky is subject to Official rather than Southern Territory rates.

XX. By its report, Exhibit 5, the Commission concluded that there should be a uniform classification based upon the Official classification, for application and use by all railroads in the country and it directed the railroads to advise the Commission within 90 days whether they would undertake to make and tender such a classification based upon the Commission's findings. With respect to the class rates, despite the foregoing findings and notwithstanding the complete absence of evidence of any substantial injury caused to the South or West or to shippers or communities therein by the differences in levels of the class rates, and notwithstanding overwhelming proof that the nature and volumes of the traffic handled in the several territories and interterritorially differ greatly and that the class rates are the result of the different causes and conditions affecting the transportation in the several territories, and notwithstanding the absence of any requirement in the Interstate Commerce Act that class rates shall be uniform in the several territories, nevertheless the Commission found, in effect, that the class rates in all territories were unlawful because not upon the same level mile for mile. It determined that because of this lack of uniformity and despite the fact that the several class rate scales had been prescribed by the Commission itself, the railroads were violating Sections 1(4) and (5)(a) of the Interstate Commerce Act in charging the existing class rates and that the differences in the levels of the class rates in the several territories unduly preferred Official Territory and shippers therein and subjected and would subject the Southern, Southwestern and Western territories as a whole to un-

reasonable prejudice and disadvantage in violation of Section 3(1) of said Act. It prescribed a scale of class rates in accordance with which the railroads in the several territories were directed to establish uniform class rates to become effective when the uniform classification directed by the Commission should become effective, which scale of class rates would bring about an increase of approximately 15 per cent in the class rates for the transportation of class rate freight between points in Official Territory. Finally, notwithstanding the complete absence of any complaint that the class rates for transportation within Official Territory are too low, or of any substantial evidence that such rates are unremunerative or impair the ability of the railroads in Official Territory to provide adequate service, the Commission ordered as an *ad interim* adjustment for the purpose of accomplishing a greater approach to uniformity, that the railroads publish and file tariff schedules to become effective not later than August 30, 1945, increasing by 10 per cent the class rates for transportation within Official Territory and reducing by 10 per cent the class rates for transportation within Southern and Western territories and between the several territories.

XXI. Commissioners Porter and Barnard filed vigorous dissenting reports which are reproduced in Exhibit 5. Commissioner Porter concluded:

> "In my opinion, the record falls far short of supporting the finding that to be just and reasonable, and free from undue prejudice and preference, the class rates throughout the area east of the Rocky Mountains must be placed in the strait-jacket of a uniform distance scale."

Commissioner Barnard in his report said at pages 725 and 728:

> "I am of the opinion that the record in this proceeding does not support or warrant the findings and conclusions reached by the majority and, therefore, I dissent."
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> • • • • • •
>
> "I am unable to find in this record sufficient evidence to support the claim of the Southern Governors' Conference that the class rate structures within the South and between the South and official territory have restricted the industrial growth of the South and have favored and stimulated the growth of industry in the North. On the contrary, the evidence shows that the South has progressed industrially during the last decade much more rapidly than any other section of the country. Furthermore, the evidence fails to convince me that the products of the South cannot compete with the products of official territory in that territory, but for the purpose of the argument, let it be assumed that the contrary is true. Nevertheless, if true, it does not come about because of the difference in the class rates but is due to other causes which have no connection whatever with these rates."

Commissioners Mahaffie and Patterson concurred with the majority only in part. Commissioner Mahaffie said (p. 708):

> "With that portion of the report which requires a permanent readjustment of class rates I do not agree. As to what I consider its defects I am in accord, in the main, with COMMISSIONER PORTER'S comments in his dissent herein. In a country so vast as this with its widely varied resources and differing transportation needs it seems to me a mistake to try to compel general equality in rates except to the extent equality is justified by transportation conditions. I think the

> effort to do so must necessarily fail. But I am afraid the process of finding out whether it can be done will be painful and costly."

Commissioner Patterson agreed "with much of what COMMISSIONER PORTER has to say in criticism of the majority report" He expressed the view (p. 708):

> "that there should be an '*ad interim* class rate revision' in connection with which an increase in official territory class rates, as contemplated by the majority report, should be tentatively approved, subject to protest and suspension, but that such increase may not be required. I find no justification for the action of the majority in entering a minimum-rate order."

He said further (p. 709):

> "I do not subscribe to the 'Ultimate Findings' of the majority. In my opinion any attempt to prescribe the rates to apply in connection with a uniform classification which is not yet in existence is premature."

XXII. Thereafter, in July 1945, and within the period allowed therefor by the Commission's Rules of Procedure, petitions for reconsideration were filed with the Commission on behalf of plaintiffs, of various chambers of commerce and commercial organizations, of various groups of shippers, and of various railroads. Illustrative of such petitions are those annexed hereto as Exhibits 7, 8 and 9. In some of these petitions it was alleged that greatly changed conditions, both as to transportation and as to industrial production, had been brought about by the war and thereafter by reconversion, and that because of these circumstances the evidence, relating as it did almost entirely to conditions in 1939 or the early war years, was stale and, apart from all other considerations, would not

for this reason support an order prescribing rates for the future. It was alleged that the war conditions had prevented many interested parties from presenting evidence and that it would be unjust to subject them to changed rates unless and until a complete record could be made. It was alleged also that even if evidence relating primarily to conditions in 1939 might support an order to take effect in November 1945 prescribing rates to be charged thereafter, nevertheless the evidence before the Commission did not support its report and order, which were contrary to and wholly without support in the evidence, were based upon unsound principles of law, were the result of influences not properly to be considered by the Commission, and were beyond the Commission's authority. It was also alleged that there was no evidence to support the conclusion that the class rates in the several territories were unlawful because not identical mile for mile; that there was no evidence that the class rates for transportation within so-called Official Territory were unremunerative or less than minimum reasonable rates; and that the Commission's order, in so far as it would require a 10 per cent increase in such rates, was entirely arbitrary. The Commission was asked to reconsider its decision and to hear oral argument in aid of such reconsideration, and to set aside its order until a complete record of current conditions could be made, and it was pointed out that because of the failure of the Commission to follow its usual procedure of causing a proposed report to be prepared and served upon the parties prior to argument, the parties had not had the opportunity usual in proceedings of such magnitude and far-reaching importance to consider and present arguments to the Commission with regard to particular proposed findings and conclusions.

XXIII. By order dated July 25, 1945, copy of which is attached hereto as Exhibit 10 and made a part hereof, the Commission modified its order of May 15, 1945 in certain respects and required that the respondent railroads should establish and make effective the changed rates prescribed thereby on November 30, 1945 upon not less than thirty days' notice, instead of upon August 30, 1945. Thereafter by further order, dated October 26, 1945, copy of which is attached hereto as Exhibit 11 and made a part hereof, the Commission further amended its order of May 15, 1945 to require that the changed rates prescribed therein be made effective on January 1, 1946 upon not less than thirty days' notice.

XXIV. On or about November 1, 1945, the Commission issued its supplemental report, dated October 30, 1945, and its order pursuant thereto of the same date, copies of which marked Exhibits 12 and 13 are attached hereto and made a part hereof. The Commission in this supplemental report found that certain changes should be made in its original report and order, but it denied the petitions for reconsideration filed on behalf of plaintiffs and others, refused to grant reconsideration or further hearing for the receipt of evidence as to conditions at the present time, and affirmed its previous decision and interim order that as an interim adjustment the class rates within Official Territory should be increased 10 per cent. Without any further evidence before it, it made certain additional findings of fact, some of which are more particularly referred to hereafter. Again Commissioners Porter and Barnard dissented.

XXV. Under compulsion of the Commission's orders and to avoid risk of penalties for violation thereof, the respondent railroads in Official Classification Territory

will, unless the Commission's orders as amended are annulled and set aside or their enforcement is stayed, be required to file with the Commission tariff schedules to become effective on January 1, 1946, upon not less than thirty days' notice, increasing by 10 per cent their class rates for the transportation of class rate freight between points in Official Territory and thereafter will be required to charge, and shippers and receivers of class rate freight in Official Classification Territory will thereafter be required to pay, such increased rates for the transportation of such freight. Similarly, the railroads in Southern and Western classification territories will be required to file tariff schedules, to become effective on January 1, 1946, reducing by 10 per cent their class rates for the transportation of class rate freight between points in those territories. And the carriers in all territories will be required to file tariff schedules providing changes in the class rates for transportation between territories in accordance with the Commission's order.

XXVI. The Commission erred and acted arbitrarily, capriciously, unlawfully and contrary to the evidence in concluding that the existing classifications are unlawful because not uniform, and in making the so-called ultimate findings set out at pages 509 to 512 of its original report, Exhibit 5, including the following:

"Upon the record, therefore, we find:

"1. That the present official, Illinois, southern, and western classifications, insofar as the ratings named therein are concerned, as a whole, are, and for the future will be unjust and unreasonable, in violation of section 1(4) and (6) of the act.

"2. That the several classifications named in finding 1, insofar as the ratings therein are concerned, as a whole, because of the substantial number of dif-

ferences in such ratings that now exist, result, and will result in the future, in undue and unreasonable preference, advantage, prejudice, and disadvantage as between shippers and receivers of freight in interstate commerce and as between classification territories, in violation of section 3 (1) of the act.

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"5. That it is entirely feasible for the respondents to establish, observe, and enforce classifications of property for transportation, with reference to which their class rates are or may be made or prescribed, which shall be uniform throughout the territory served by the several respondents. That the establishment, observance, and enforcement of such a uniform classification of property for transportation, with reference to which the class rates of the respondents are or may be made or prescribed, will be just and reasonable, and that to the extent the classifications established, observed, and enforced by them with reference to which their class rates are or may be made or prescribed, are different and nonuniform, to that extent their existing classifications of property for transportation, as embraced within the Consolidated Freight Classification, are, and will be for the future, unjust and unreasonable and in violation of section 1(4) and (6) of the Interstate Commerce Act.

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"7. That upon the basis of the present record, the classification pattern prescribed for application in connection with class rates in eastern territory, known as the official classification, comports better with the requirements of the statute that the classification should be just and reasonable than do either of the remaining classifications embraced in the Consolidated Freight Classification. The general basis of the official classification, including the percentage relation between the classes, would be just and reasonable for application uniformly by the respondents, and should be so established by them within a reasonable time.

"8. That it is just, fair, and reasonable that a uniform classification should be established which should contain (*a*) classes, intermediate between the several classes in the official classification, corresponding to the columns prescribed in finding 1 in *Eastern Class Rate Investigation,* 164 I. C. C. 314, 373; 171 I. C. C. 481, 499; (*b*) the present regular classes which are multiples of class 1 (class 100); and (*c*) additional classes for commodities which should take lower ratings than the lowest class in the official classification. And that these classes in the uniform classification should be as follows: Classes 400, 300, 250, 200, 175, 150, 125, 100, 92.5, 85, 77.5, 70, 65, 60, 55, 50, 45, 40, 37.5, 35, 32.5, 30, 27.5, 25, 22.5, 20, 17.5, 16, 14.5, and 13."

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XXVII. The Commission erred, acted arbitrarily, capriciously, unlawfully and contrary to and without support in the evidence and without support in necessary preliminary findings in making the so-called ultimate findings set forth on pages 700 to 702, inclusive, of its original report, Exhibit 5 hereto attached, said ultimate findings being as follows:

"Upon the record, therefore, we ultimately find:

"1. That the intraterritorial class rates (except as they apply to rail-and-water coastal service or relate to short or weak-line arbitraries) applicable within official, Illinois, southern, southwestern, and western trunk-line territories, are, and for the future will be, unjust and unreasonable, in violation of section 1(4) and (5) (a) of the act.

"2. That the interterritorial class rates in issue in this proceeding applicable between official, Illinois, southern, southwestern, and western trunk-line territories are, and for the future will be, unjust and unreasonable, in violation of section 1(4) and (5) (a) of the act.

"3. That the relation between the interterritorial class rates applicable from southern, southwestern,

and western trunk-line territories to official and Illinois territories, on the one hand, and the intraterritorial class rates applicable within official and Illinois territories, on the other hand, makes, gives, or causes, and for the future will make, give, or cause, undue and unreasonable preference and advantage to official and Illinois territories as a whole and the shippers and receivers of freight located therein, and subjects and for the future will subject, southwestern, and western trunk-line territories as a whole and the shippers and receivers of freight located therein to undue and unreasonable prejudice and disadvantage, in violation of section 3(1) of the act.

"4. That a just and reasonable basis of class rates, not unjustly discriminatory or unduly preferential or prejudicial, to be observed by the respondents with respect to the traffic described in findings 1, 2, and 3 immediately preceding, will be the following:

"(*a*) The application as a maximum for class 1 (class 100) of the scale of rates shown in appendix 10.

"(*b*) The rates herein prescribed are to be applied to the distances over the shortest possible rail routes by which carload traffic can be interchanged between carriers without transfer of lading.

"(*c*) That the scales of class rates for each class, other than class 1 (class 100), shall bear the percentage relations, to class 1 (class 100) rates found in part I hereof to be just, fair, and reasonable for the classes in the uniform classification. Appendix M to *Western Trunk Line Class Rates*, 164 I. C. C. 1, 282, contains a table which shows the percentages of class 100, below 100, herein found reasonable; and shows the rates which will result from applying these percentages to any given rate from 30 cents to $4. The rates shown in this table should be applied in establishing the rates for classes below 100. For classes above 100, fractions of a cent should be dis-

posed of by dropping those less than one-half and by increasing those of one-half cent or more to the next whole cent.

"(*d*) Key-point class rates based on the scale herein found reasonable may be established subject to our approval between points where such rates were prescribed by us in the prior general class rate revisions.

"(*e*) That such class rates shall apply to the ratings of commodities taking class rates as the same shall be rated in the uniform classification found to be just, fair, and reasonable in part I hereof.

"(*f*) That such revised uniform class rates and classification ratings shall be made applicable simultaneously."

XXVIII. The Commission erred and acted arbitrarily, capriciously, unlawfully, and contrary to and without support in necessary preliminary findings or in the evidence in making the following findings and determinations, set out at pages 703 to 706, inclusive, of its report, Exhibit 5:

"We find and determine that the basis hereinafter outlined will result in rates which, until a complete revision in harmony with our previous findings is possible, will be just and reasonable.

"We find and determine that on and after the effective date of the order to be entered herein, the existing and current interstate class rates applicable to freight traffic moving at the classification ratings within southern, southwestern, and western trunk-line territories as those territories have heretofore been described in this report, and interterritorially between those territories, and also between those territories and official territory, as hereinbefore described, will be unjust and unreasonable unless reduced 10 percent, subject to the class 1 scale shown at the end of this paragraph as minima for class 1 rates, and subject to the qualifications hereinafter

indicated. This reduction is to be made by using the present current applicable class 1 rates as a base, and reducing them 10 percent, subject to observance of the rates in the distance scale set out hereinafter as minima. The rates on all the other classes in each class-rate system are to be correspondingly reduced by observing the same percentage relations to the class 1 rates thus reduced that such classes bear to the currently applied class 1 rates. No changes in existing exception rates or column rates are contemplated by this finding. No increase in any existing class rates is to be made under this finding within the southern, southwestern, and western trunk-line territories, and interterritorially between those territories, and also between those territories and official territory. In determining resulting rates, fractions of a cent should be disposed of by dropping those of less than one-half cent and by increasing those of one-half cent or more to the next whole cent. We do not contemplate that groupings in connection with the present class rates shall be changed as a result of this finding.

. . . . . .

"We find and determine that simultaneously as a part of the adjustment hereinbefore outlined, the existing applicable interstate class rates for freight traffic moving at classification ratings within official territory (including Illinois territory) should be increased 10 percent as maximum scales, superseding the intraterritorial official class-rate scale heretofore prescribed or authorized by us, subject to the qualifications hereinafter indicated, and that as so increased those scales will be just and reasonable as maxima. The increase of maximum class rates applicable within official territory is to be made by using the present current applicable class 1 rates as a base, and increasing them 10 percent. The rates on the other classes should be correspondingly increased by observing the same percentage relations to the maximum class 1 rates as thus increased that such

classes bear to the currently applied class 1 rates. No changes in existing exception rates or column rates are contemplated by this finding. The same provision with respect to disposition of fractions of a cent, as to groupings, and as to the ascertainment of distance hereinbefore stated with respect to the reductions within and between other territories and between those territories and official territory, shall in like manner apply to the increases in the maximum class-rate scales within official territory herein found to be just and reasonable. This finding as to the justness and reasonableness of the intraterritorial official class rates is based in part upon a consideration of the returns from operation of the various respondents in the several territories as reported to us, which we have considered pursuant to stipulations of record. From those returns and the whole record we find and determine that the revenue needs of the carriers in official territory with respect to their class-rate traffic are greater than is the case as to the class-rate traffic of the carriers in the other territories described.

"The respondents maintain flat minimum charges for each less-than-carload shipment which may be and sometimes are stated and embodied in a rule of the governing freight classifications, and in other instances in varying measure are published in freight tariffs of the respondents or in exceptions to the classifications. The minimum charge provided by the various classifications is uniformly 55 cents. While this proceeding of investigation does not extend to rules of the classification, the minimum charge stated therein is in the nature of a rate, and is so published as a matter of convenience. We therefore find and determine that the minimum charge upon class-rate shipments in the territory included in No. 28300 is within the scope of this investigation.

"From the record we find and determine that in many instances when commodities transported take class rates, the respondents have extended the service of picking up and delivering shipments and perform

such service under the applicable class-rate charge without additional charge therefor. We also find and determine that such pick-up and delivery service has been extended in scope largely since our findings and orders in the various proceedings hereinbefore recited which prescribed or approved the class rates in issue in this proceeding. We find and determine from the evidence of record in this proceeding, that when such service is performed the applicable class rate with the existing minimum charge as stated does not yield the out-of-pocket costs incident to the transportation service which it purports to cover. We further find that to the extent the minimum charge per shipment is less than 75 cents, it is below a just and reasonable minimum rate and charge. Upon the record as it stands, and predicated upon the adjustments for the interim period hereinbefore found to be just and reasonable, we determine and find that the minimum charge per shipment, whether pick-up and delivery service is afforded or not, whenever such charge is below 75 cents, is below the minimum of a just and reasonable rate and charge and that 75 cents is and will be a just and reasonable minimum charge to be made."

XXIX. The Commission erred as a matter of law and acted arbitrarily, capriciously, unlawfully and contrary to and without support in the evidence in making the following additional findings or statements of conclusion in its supplemental report, dated October 30, 1945 (sheets 19-21):

"It is not necessary again to review the evidence as to the unreasonableness of the class rates brought in issue in these proceedings, or as to the undue preference and undue prejudice caused by and resulting from such rates, which we have found to exist. Having made the findings of unlawfulness, we have authority under section 15(1) of the Act and under section 5(b) of the Transportation Act of 1940, to prescribe the method for removing such unlawful-

ness, and to prescribe the rate levels or the rates which we find to be necessary to remove it. We may, by order, prescribe maximum or minimum or maximum and minimum rates to remove any unlawfulness, and such order need not provide for an alternative method.

"In support of the contention that an alternative method of removing undue preference and undue prejudice must be provided, petitioners refer to *Texas & Pacific Ry. Co.* v. *United States,* 289 U. S. 627, in which the Court stated that 'where an order is made under section 3, an alternative must be afforded'. In a footnote to that statement, however, the Court said: 'This is not true of an order pursuant to Sec. 15 (1) prescribing maximum or minimum or maximum and minimum rates; but the present orders were not entered under that section'. See also *Youngstown Co.* v. *United States,* 295 U. S. 476.

"In requiring an increase in rates to remove unlawfulness we are not required first to find that existing rates, or proposed reduced rates initiated by carriers, are not compensatory.

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"In the instant proceeding, in dealing with the interim adjustment, pages 702-706 of the report, we stated that our general findings and conclusions emphasized the importance and desirability of bringing the several intraterritorial freight-rate structures closer together in level and more upon the same pattern or scheme. We also emphasized the importance and desirability of removing as many differences as possible between the interterritorial rates of the respondents and the intraterritorial rates which they maintain. The differences in such rates and the effect upon the welfare of carriers, producers, shippers, consumers, and upon the welfare of localities, districts, regions, and territories were fully discussed in the report. The costs of service were considered, together with the consist of traffic, the distribution of the general rate burden, rate and revenue comparisons, and other matters. Our conclusions were that

the intraterritorial class rates within official and Illinois territories, as well as within the other territories dealt with, were unjust and unreasonable and that the relation between the interterritorial class rates from such other territories to official and Illinois territories, on the one hand, and the intraterritorial rates within the latter territories, on the other, gives and causes, and will continue to give and cause, an undue and unreasonable preference and advantage to official and Illinois territories as a whole and shippers and receivers of freight located therein, and subjects, and for the future will subject, the other territories as a whole and the shippers and receivers of freight located therein to undue and unreasonable prejudice and disadvantage.

"Our general power under section 15(1) of the act to order the removal of any unlawfulness in rates found to exist after full hearing has been supplemented and reinforced, insofar as this particular investigation is concerned, by section 5(b) of the Transportation Act of 1940. After authorizing and directing us to institute an investigation of rates between points in one classification territory and points in another such territory, or within a territory, we are specifically empowered by that provision 'to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist.' In reaching our conclusions as to the necessity for increases in official and Illinois territories, and reductions in the other territories and interterritorially, we gave consideration not only to the factors previously mentioned, but also to the rates of return of the carriers in the respective territories and to their ability to render efficient service. The interim adjustment, as previously explained, was the initial step in the ultimate revision of the class rate structures found to be unlawful.

"We are convinced from the evidence in these proceedings that the present class rates within official and Illinois territories are below a just and reasonable level and should be increased as a part of the

adjustment, to remove the unlawfulness in such rates, in respect of both their unreasonably low level and their unduly preferential character. We are of the opinion that our findings as to those rates are sufficiently stated in the prior report, but to remove any doubt, we find that the class rates within official and Illinois territories are less than just and reasonable rates, with the exceptions as stated in the prior report and in this report, and therefore unlawful, as well as unlawful because of their unduly preferential character, as more fully stated in the prior report."

XXX. The Commission's reports and orders, Exhibits 5, 6, 12 and 13, are unlawful, beyond the power of the Commission, based upon erroneous conclusions of law, without support in necessary findings of fact, contrary to and without support in the evidence, arbitrary, biased and capricious.

XXXI. Without limiting the scope of the foregoing, the reports and orders of the Commission, Exhibits 5, 6, 12 and 13, are unlawful, beyond the Commission's power, arbitrary and capricious in the following respects and for the following reasons, among others:

(1) The reports as a whole contain incorrect discussions and conclusions of law, incorrect and unjustified preliminary findings of fact and analyses of the evidence and reflect bias and prejudgment in their approach to the issues.

(2) In so far as the reports assume to find and the orders are based on findings that the railroads violate the Interstate Commerce Act in charging and collecting the existing class rates and that the class rates are unreasonable and unlawful in violation of Section 1 of the Interstate Commerce Act because not on a uniform level, mile for mile, throughout the country, they are contrary to and without support in the evidence or the law, in that:

(a) There is no substantial evidence that the class rates are unreasonable or unlawful in violation of Section 1 of the Interstate Commerce Act because the levels thereof are not uniform in the several rate territories.

(b) There is no evidence sufficient to support a finding that the differences in the levels of the class rates in the several rate territories and interterritorially will interfere with or restrict the free movement of traffic or that they have heretofore done so, and the evidence and the findings set out in subdivisions XVII and XVIII hereof are to the contrary.

(c) There is no evidence sufficient to support a finding that the differences in the levels of the class rates in the several rate territories and interterritorially have prevented or limited the industrial and economic growth of the South and Southwest, and the evidence and the findings set out in subdivisions XVII and XVIII hereof are to the contrary.

(d) There is no evidence sufficient to support a finding that the costs of transporting class rate traffic in Official Territory are as high as the costs of transporting class rate traffic in Southern and Western territories.

(e) The Interstate Commerce Act contains no requirement that class rates must be uniform in all territories, and the long administrative history of the Act constitutes recognition that different levels of rates in different sections of the country are permitted.

(f) Any evidence deemed to support a finding that there should be a uniform level of class rates

equally requires findings that exception and commodity rates should likewise be uniform; and so long as no requirement is made that exception and commodity rates should be made uniform in all territories, as for example where there now are lower rates for the transportation of raw materials in the South than in Official Territory, it is arbitrary and discriminatory to find that the class rates are unlawful because not uniform, or to require that they shall be made uniform.

(g) The existing class rates and the differences in the levels in the class rates in the several territories were prescribed by and are the result of orders of the Interstate Commerce Commission after thorough and extended investigations, and there is no evidence of changed conditions since those orders to support a finding that the rates are now unlawful because they reflect the differences caused by compliance with the orders.

(3) In so far as the reports assume to find and the orders are based on findings that the differences in the levels of the class rates in the several territories are the cause of undue or unreasonable prejudice or disadvantage to the South or West or to shippers or localities therein or of undue and unreasonable preference or advantage to Official Territory or shippers or localities in that territory in violation of Section 3 of the Interstate Commerce Act, they are contrary to and without support in the evidence or in law, in that:

(a) There is no evidence sufficient to support a finding essential to an ultimate finding of a violation of Section 3 that the differences in the levels of the class rates have caused or will cause injury to the South and West or to shippers located

therein or have been or will be the source of undue advantage to Official Territory or shippers located therein, and the evidence and the findings and facts set out in subdivisions XVII and XVIII hereof are to the contrary.

(b) The prohibition of undue prejudice and preference in Section 3 of the Interstate Commerce Act does not require that the class rates or any other rates shall be uniform throughout the country.

(c) The Commission erred as a matter of law in concluding that authority to find undue preference and prejudice in the circumstances here and to order their removal are afforded by the amendment of Section 3 (1) of the Interstate Commerce Act by the Transportation Act, 1940 and in its discussion thereof at pages 688 to 692 of its original report.

(d) There is no evidence sufficient to support a finding that the circumstances and conditions affecting the class rates or affecting the carriers in the transportation of class rate traffic in the several territories are so substantially similar as to require that the levels of the class rates must be the same in the several territories, and the evidence is to the contrary and shows that the carriers in establishing class rates in the several territories are and have been controlled by entirely different circumstances and conditions as to the nature of the traffic to be moved, including greatly differing rate structures on all freight, differing distributions of the so-called transportation burden, different volumes and kinds of freight to be transported, and different competitive and physical conditions.

(e) The evidence shows that the differences in the levels of the class rates in the several territories are the result of orders of the Commission prescribing the class rates in each territory and interterritorially in the light of the differing conditions found in the several territories as shown by the evidence in the proceedings in which such orders were made, and there is no evidence that conditions have so changed since those proceedings as to support a conclusion that the rates therein prescribed as just, reasonable and non-discriminatory have become unduly preferential and prejudicial.

(f) There is no evidence sufficient to support a finding that the costs of transporting class rate traffic in Official Territory are as high as the costs of transporting class rate traffic in Southern and Western territories.

(g) The evidence shows that the lower class rates in Official Territory are the result of or are offset by rates for the transportation of raw materials and low-grade freight which are higher in Official Territory than the corresponding rates in Southern Territory.

(h) There is no evidence sufficient to support a finding that the same carriers or groups of carriers control the levels of the class rates in the several territories and are therefore responsible for the differences in such levels.

(4) In so far as the requirement that the class rates for transportation between points in Official Territory should be increased purports to be based upon a finding of undue prejudice and preference in violation of Section 3 of the Interstate Commerce Act, the orders are invalid and beyond the Commission's authority in

failing to leave to the railroads, as required by law, the alternative of removing said undue prejudice and preference, if it were lawfully found to exist, entirely by reducing the class rates for transportation in the South and West.

(5) In so far as the reports are based on a finding or assumption that there are no substantial differences in the costs of performing transportation in the several rate territories, they are without support in the evidence and contrary to other findings for the reasons that:

(a) There is no evidence in the record as to the costs of transporting class rate traffic.

(b) Such cost computations as are in evidence are computations of average costs based upon statistics as to all freight, and in view of the greatly differing kinds and volumes of freight and different lengths of haul in the several territories, it cannot be assumed that such averages reflect the relative costs of transporting class rate traffic in the several territories, nor do they purport to do so.

(c) Even on the evidence of the Commission's witness and the Commission's own findings, the average cost of transporting all freight in Official Territory is made to appear approximately the same as the average for Southern Territory only by arbitrarily and erroneously excluding statistics of the so-called Pocahontas Lines, which are railroads in Official Territory, in computing the average for that territory, and by including statistics for transportation actually in Official Territory in computing the average for Southern Territory.

(d) The Commission itself found that the average cost of transporting all freight on the railroads

in Official Territory, including the Pocahontas Lines, is from 10 to 18 per cent less than the average cost of transporting freight in Western Territory.

(6) In so far as the orders require an increase in the class rates for transportation between points in Official Territory, they are without support in necessary findings, are contrary to and without support in the evidence, and are based upon erroneous and unsound legal concepts, for the further reasons that:

(a) There is no evidence sufficient to support a finding that such rates are less than minimum reasonable rates in violation of Section 1 of the Interstate Commerce Act, or sufficient to sustain the exercise by the Commission of authority provided by Section 15 of said Act to prescribe minimum rates for the future.

(b) There is no evidence sufficient to support a finding of changed conditions since the class rates in Official Territory were prescribed by the Commission as maximum reasonable rates, which now cause these rates to be less than minimum reasonable rates.

(c) The fact that the class rates for transportation in Southern and Western territories are higher than the class rates for transportation in Official Territory does not render the latter unreasonable or less than minimum reasonable rates.

(d) There is no evidence sufficient to support a finding that the present class rates for transportation between points in Official Territory are unremunerative or less than adequate compensation for the services to which they relate, or that they throw a burden on other traffic, or are otherwise

unreasonably low in violation of Section 1 of the Interstate Commerce Act.

(e) There is no evidence sufficient to support a finding that under the present class rates the transportation of class rate traffic by the railroads between points in Official Territory does not bear its full and proper share of the total transportation burden.

(f) The requirement that the class rates for transportation in Official Territory be increased is not justified or supported by the Commission's finding that the average so-called rates of return of the railroads in Official Territory have in certain years been less than the average rates of return of the carriers in Southern and Western territories, because said rates of return have, in each instance, been computed on the basis of the book values of the railroad properties, which do not represent their actual values or the values upon which, under the law, rates should be prescribed; because the Commission in other proceedings has consistently refused to recognize rates of return on book values as a basis for prescribing maximum or minimum rates; because there is no finding and no evidence to support a finding that the relationships of the rates of return have been due to the levels of the class rates or to any inadequacy of the class rates for transportation in Official Territory rather than to other rates or other causes; and because rates of return are referred to by the Commission here only in an arbitrary attempt to create an impression of factual support for a minimum rate order, for which the evidence provides no justification.

(g) There is no evidence sufficient to support a finding, such as suggested on sheet 21 of the supplemental report, that an increase in the class rates for transportation in Official Territory is necessary to enable the railroads in Official Territory "to render efficient service", and there is no evidence whatever in the record that the railroads in Official Territory are not now rendering and are not able to render adequate and efficient service under their existing class rates.

(h) The Commission's orders violate Section 15a (2) of the Interstate Commerce Act, requiring that "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due consideration * * * to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost, consistent with the furnishing of such service", in that there is no finding and no evidence to support a finding that the present class rates for transportation in Official Territory are not consistent with the furnishing of adequate and efficient railway transportation, or that the increased rates prescribed will be the lowest rates consistent therewith.

(i) The requirement that the class rates for transportation in Official Territory be increased and the findings in the reports are inconsistent with the findings and order of the Commission in another contemporaneous proceeding, Ex Parte 148, *Increased Railway Rates, Fares, and Charges, 1942*, in which the Commission, by order dated October 30, 1945 has denied the application of the railroads in Official Territory and those in other territories to increase their freight rates at once in order to obtain additional revenues.

(j) The requirement that the class rates for transportation between points in Official Territory be increased proceeds from or rests upon the Commission's conclusion that there should be a uniform basis of class rates throughout the country east of the Rocky Mountains, and rests further upon the fact or the conclusion implicit in the reports that to bring about uniformity by reducing the class rates for transportation between points in Southern and Western territories to the level of the class rates in Official Territory would unduly deplete the revenues of the carriers in the South and West. Hence, the effect of the order would be arbitrarily to require shippers in Official Territory to pay higher rates than would be warranted by costs, service or other factors properly affecting the rates for transportation in that territory, in order to protect the revenues and rates of the carriers in other territories, for the transportation of other freight. There is no authority in law for such a requirement.

(k) The Commission's finding (p. 696) that in Southern and Western territories "numerous lower exception and commodity rates which move the great preponderance of the traffic and produce the great preponderance of the revenues in those territories, have been established" renders inconsistent its conclusion that the the differences in the levels of the class rates have interfered with the free movement of freight or caused undue prejudice or preference and makes arbitrary its orders requiring an increase in the class rates for transportation in Official Territory.

(l) The orders, while requiring an increase in the class rates for transportation in Official Territory, would leave in effect the present commodity

rates in Official Territory, which are higher than corresponding commodity rates in the South, and in consideration of which the present class rates have been established and maintained.

(m) In the so-called *Southern Governors Case, State of Alabama* v. *New York Central R. Co.*, Docket No. 27746, 235 I. C. C. 255, the Commission prescribed reduced rates for the transportation of certain commodities from the South to the North for the purpose of accomplishing parity, mile for mile, between the rates for the transportation of such commodities from southern manufacturing points and the rates for transportation from manufacturing points in Official Territory to common destination markets in the latter territory. The reduced rates so established for transportation from the southern producing points are commodity or exception rates. The rates for transportation from producing points in Official Territory are, in large part, class rates. Such are the facts with regard to the transportation of such commodities as stoves, fire hydrants, and brass pipe fittings, which are manufactured in New York State and elsewhere in Official Territory and are sold in competition with the same articles manufactured in the South. The order of the Commission herein requiring an increase in the rates for the transportation of these articles from producing points in Official Territory, while either reducing or leaving undisturbed the rates for the transportation of the same commodities from southern producing points, would subject manufacturers and shippers in Official Territory to higher rates, mile for mile, for transportation to destinations in their own territory than the rates which would be charged to their competitors in Southern Territory in violation of the basis of said decision.

(7) The findings in the reports and the orders would arbitrarily discriminate against plaintiffs, and shippers and communities in Official Territory in that

(a) While professing to be based upon accomplishing uniformity of class rates, the orders would produce differences in rates adverse to plaintiffs and shippers in Official Territory by requiring an increase in the class rates for transportation in Official Territory, while leaving undisturbed lower or equal exception or commodity rates charged for the transportation of the same freight for competing shippers in the South and West.

(b) The orders, while requiring an increase in the class rates for transportation of manufactured articles in Official Territory would require shippers and receivers in Official Territory to continue to pay higher freight charges, distance considered, for the transportation of their raw materials and low grade freight than the freight charges paid by their southern competitors.

(c) The orders would require a 10 percent increase in rates for the transportation of class rate traffic in Official Territory, which according to findings in the report constitutes 5.8 percent of the total freight transported in that territory under the guise of accomplishing uniformity with the freight rates on class rate traffic, which, according to the same findings, constitutes only 1.8 percent of a much smaller total volume of freight transported in Southern Territory and .6 percent of a smaller total volume of traffic in Western Territory.

(8) The Commission erred as a matter of law in so far as its decision and orders rest upon a conclusion that they are authorized by or find support in Section 5 (b) of the Transportation Act, 1940.

(9) The orders are invalid in that they do not represent a lawful exercise of regulatory authority based upon evidence and necessary findings supported by evidence that the present classifications and class rates are unlawful, but instead constitute an arbitrary and unsupported attempt to interfere with the managerial discretion of the railroads as to rate-making policy.

(10) The orders are invalid in that, instead of being based upon findings required by an impartial weighing of the evidence, they reflect the influence of various bills which had been introduced into Congress and of political and other factors which the Commission could not properly consider, and their enforcement would therefore be a denial of the fair hearing required by the Interstate Commerce Act.

(11) The orders in prescribing class rates for the future are arbitrary and without support in the findings or in the evidence since the evidence all related to transportation, industrial and commercial conditions in 1939 and during the early war years, and the findings, especially the important findings as to costs, revenues and traffic, purported to relate to the early war years, whereas, as the findings themselves indicate and as the Court should judicially recognize, conditions after the war are likely to be greatly different, so that there is no evidence as to what conditions will be when the order, by its terms, is to take effect.

XXXII. The Commission erred as a matter of law and acted arbitrarily and capriciously in entering its order dated October 30, 1945 denying the various petitions for further hearing and in refusing to reopen the proceeding for the receipt of evidence as to changed conditions affecting transportation and the lawful measures of the class

rates of the railroads since the conditions to which the evidence of record and the findings relate.

XXXIII. The Commission's orders being unlawful, arbitrary and capricious, contrary to and without support in the evidence and based upon unsound and invalid legal principles, the enforcement of so much of said orders as would require the railroads in Official Territory to increase their class rates 10 per cent would result in taking from shippers and receivers in Official Territory, citizens of plaintiffs, their property without just compensation and without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XXXIV. If the orders of the Commission are invalid and unlawful, as herein alleged, and if they are not stayed pending final determination of this action and are not then annulled and their enforcement permanently enjoined, and if, under the compulsion of said orders, the railroads in Official Territory, including the railroads engaged in transportation within the jurisdiction of this Court, are permitted or required to or do increase their class rates for interstate transportation 10 per cent, plaintiffs, as shippers, will suffer great and irreparable injury by reason of the additional freight charges which they will unlawfully be required to pay for transportation of freight shipped or received by them; and the citizens and communities on whose behalf plaintiffs, in their representative capacities, bring this action, will be discriminated against and will suffer great and irreparable injury in that, among other things, (1) the cost of doing business in Official Territory will be increased, (2) the increased cost of manufacturing and distributing goods in Official Territory will tend to restrict the free flow of such goods, to stimulate unemployment, and destroy property values in Official Territory, (3) shippers in Official Territory will be required to pay increased class rates for the transpor-

tation of manufactured articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West, while at the same time they will be required to continue to pay substantially higher transportation charges for the transportation of their raw materials and other low-grade freight than the transportation charges paid by their southern competitors, and (4) shippers and receivers of freight in Official Territory will be required to pay higher freight charges than heretofore demanded by the railroads in that territory or than justified by their transportation costs or other pertinent considerations in order that the class rates for transportation in the South and West may not be reduced more than 10 per cent, all of which will subject plaintiffs, their citizens and communities, to damage running into many millions of dollars, for which they will have no means of relief or recoupment.

XXXV. Plaintiffs are without adequate remedy at law.

WHEREFORE, plaintiffs pray

1. That, pursuant to the statutes referred to in paragraph IV hereof, there be constituted to hear this case a special court of three judges, one of whom shall be a Circuit Judge.

2. That process issue against the United States of America.

3. That the Court, on hearing, after not less than three days' notice to the Interstate Commerce Commission and the Attorney General of the United States, by order allow a temporary stay or suspension of the operation of the orders of the Interstate Commerce Commission, Exhibits 6 and 13 herein, for not more than sixty days from the date of said order pending hearing and determination of plaintiffs' application for an interlocutory injunction,

which order shall contain a specific finding that irreparable injury would otherwise result to plaintiffs, their citizens and communities.

4. That on hearing, after not less than five days' notice to the Attorney General of the United States and to the Interstate Commerce Commission, the Court, by interlocutory injunction, enjoin and restrain the enforcement of said orders of the Interstate Commerce Commission pending final hearing and determination of this suit.

5. That upon final hearing and submission herein the Court adjudge that the reports and orders of the Interstate Commerce Commission, Exhibits 5, 6, 12 and 13, are unlawful, beyond the power of the Commission, arbitrary, capricious, unsupported by essential findings, contrary to and without support in the evidence, and that the Court by order annul and set them aside and forever enjoin enforcement thereof.

6. That plaintiffs have such other and further relief as in the premises may be proper.

Respectfully submitted,

NATHANIEL L. GOLDSTEIN,
Attorney General
Albany, New York
PARKER McCOLLESTER,
FRANK J. CLARK,
Special Assistant Attorneys General
25 Broadway,
New York 4, N. Y.
For plaintiff The State of New York

CLAIR JOHN KILLORAN,
Attorney General
Wilmington, Delaware
For plaintiff The State of Delaware

Petition.

JAMES A. EMMERT,
Attorney General
Indianapolis, Indiana
For plaintiff The State of Indiana

WILLIAM CURRAN,
Attorney General
PAUL HAMMOND,
Deputy Attorney General
Baltimore, Maryland
For plaintiff The State of Maryland

JOHN R. DETHMERS,
Attorney General
JAMES W. WILLIAMS,
Assistant Attorney General
Lansing, Michigan
For plaintiff The State of Michigan

WALTER D. VAN RIPER,
Attorney General
ROBERT PEACOCK,
Deputy Attorney General
Trenton, New Jersey
For plaintiff The State of New Jersey

HUGH S. JENKINS,
Attorney General
KENNETH L. SATER,
Special Counsel
Columbus, Ohio
For plaintiff The State of Ohio

JOHN MARTIN,
Attorney General
HUGH T. FERGUSON,
Assistant Attorney General
Madison, Wisconsin
For plaintiff The State of Wisconsin

JAMES H. DUFF,
Attorney General
E. A. DELANEY,
Deputy Attorney General
Harrisburg, Pennsylvania
For plaintiff The Commonwealth of Pennsylvania

Duly sworn to by M. P. Catherwood; jurat omitted in printing.

Exhibit 1.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 29th day of July, A. D. 1939

No. 28300

CLASS RATE INVESTIGATION, 1939

The Commission having under consideration the matter of interstate class rates (both intraterritorial and interterritorial) in official, southern, southwestern, and western trunk-line territories, and good cause appearing therefor:

It is ordered, That a proceeding of investigation and inquiry be, and it is hereby, instituted by the Commission on its own motion into and concerning the interstate class rates under the respectively designated classes, as follows:

estern classes	1	2	3	4	A	5		B	C	D		E
rcentages	100	85	70	55	45	37.5		32.5	30	22.5		17.5
icial classes	1		2	3-R25		R26		4		5		6
rcentages	100		85	70		55		50		35		27.5
uthern classes	1	2	3	4	5	6	7	8	9	10	11	12
rcentages	100	85	70	55	45	40	35	30	25	22.5	20	17.5

applicable to the transportation in interstate or foreign commerce of property by common carriers by railroad, or by water, or partly by railroad and partly by water, subject to the Interstate Commerce Act, and the charges resulting therefrom, between all points in the United States lying on and generally eastward of the following line: The western boundaries of the States of North Dakota, South Dakota, and Nebraska south to the main

line of the Union Pacific Railroad Company, thence along such railway west to Cheyenne, Wyo., thence south on the line of The Colorado and Southern Railway Company and paralleling railroads passing through Denver, Pueblo, and Trinidad, Colo., to the border of the State of New Mexico, thence successively east, south, and west along the latter border to the Rio Grande River (excluding any point in New Mexico), thence along the Rio Grande to the Gulf of Mexico, with a view to determining whether said rates and charges, or any of them, are unjust, unreasonable, unduly prejudicial, unduly preferential, or otherwise unlawful, and to making such findings and order or orders as may be proper in the premises.

It is further ordered, That all common carriers by railroad, or by water, subject to said Act, and participating in said transportation be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of said respondents; and that notice of this proceeding be given to the general public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

(SEAL)

W. P. BARTEL,
Secretary.

Exhibit 2.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 29th day of July, A. D. 1939

No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

The Commission having under consideration the matter of the consolidated freight classification containing the description of articles, carload minimum weights, and ratings on such articles, in official, southern, and western classifications, and applicable to the transportation of property in interstate or foreign commerce, by common carriers by railroad, or water, or partly by railroad and partly by water, subject to the Interstate Commerce Act, and good cause appearing therefor:

It is ordered, That a proceeding of inquiry and investigation be, and it is hereby, instituted by the Commission on its own motion into and concerning the descriptions, minima, and ratings provided in said consolidated freight classification, with a view to determining whether they, or any of them, are unjust, unreasonable, unduly prejudicial, unduly preferential, or otherwise unlawful, and to making such findings and order or orders as may be proper in the premises.

It is further ordered, That all common carriers by railroad, or by water, engaged in the transportation of property in interstate and foreign commerce, subject to said act and participating in tariffs of rates or charges

Exhibit 2.

governed by said classifications, be, and they are hereby, made respondents to this proceeding; that a copy of this order be served upon each of said respondents; and that notice of this proceeding be given to the general public by depositing a copy of this order in the office of the Secretary of the Commission at Washington, D. C.

And it is further ordered, That this proceeding be assigned for hearing at such times and places as the Commission may hereafter direct.

By the Commission.

(SEAL)

W. P. BARTEL,
Secretary.

59

Exhibit 3.

INTERSTATE COMMERCE COMMISSION

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of August, A. D. 1940

No. 28300

CLASS RATE INVESTIGATION, 1939

It appearing, That the Commission on July 29, 1939, made and entered its order in the above-entitled proceeding, instituting an investigation and inquiry into and concerning the interstate rates under the classes therein designated and applicable between all points in the territory described; and good cause appearing therefor:

It is ordered, That said order of July 29, 1939, be, and it is hereby, modified so that the scope of the investigation shall include all rates determined by ratings in the classification proper, irrespective of whether said ratings are stated as the regular numbered or lettered classes or as percentages of first class, but none other.

It is further ordered, That said order of July 29, 1939, be, and it is hereby, further modified by including the rates subject to ratings described in the next-preceding paragraph and provided in the Illinois classification, as well as rates subject to ratings in official, southern, and western classifications.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

Exhibit 4.

INTERSTATE COMMERCE COMMISSION

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 1st day of August, A. D. 1940

No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

It appearing, That the Commission on July 29, 1939, made and entered its order in the above-entitled proceeding, instituting an investigation into and concerning the descriptions of articles, carload minimum weights, and ratings, provided in official, southern, and western classifications as published in the consolidated freight classification; and good cause appearing therefor:

It is ordered, That said order of July 29, 1939, be, and it is hereby, modified to include the descriptions, minima, and ratings provided in Illinois classification and likewise published in said consolidated freight classification.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

64

Exhibit 5.

Original Report May 15, 1945

(See opposite ☞)

24573

INTERSTATE COMMERCE COMMISSION

No. 28300

CLASS RATE INVESTIGATION, 1939

No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

Submitted July 17, 1944. Decided May 15, 1945

PART I

Upon investigation in No. 28310 into descriptions of articles, carload minimum weights, and ratings in official, Illinois, southern, and western classifications applicable to transportation of property throughout the United States, in interstate or foreign commerce, by railroad, by water, or partly by railroad and partly by water, found:

1. That the present official, Illinois, southern, and western classifications, insofar as the ratings named therein are concerned, as a whole, are and for the future will be unjust and unreasonable, in violation of section 1 (4) and (6) of the Interstate Commerce Act.
2. That the present official, Illinois, southern, and western classifications, insofar as the ratings named therein are concerned, as a whole, because of the substantial number of differences in such ratings, result and will result in undue and unreasonable preference and advantage and in undue and unreasonable prejudice and disadvantage, in violation of section 3 (1) of the act.
3. That to make the classification fair and reasonable it is essential that the grouping of analagous articles and those with similar transportation characteristics, shall be made according to accepted and recognized principles of classification, and that scales of class rates be maintained providing different rates for the several classes of property, which shall bear a just and reasonable relation each with the others.
4. That it is impossible, without a basic unity in classification ratings throughout the country, to maintain a just and reasonable relation between the class rates on commodities moving in carload and less-than-carload lots, or as between competing commodities moving at class rates.
5. That the establishment of a uniform classification of property for transportation, with reference to which class rates of respondents are or may be made or prescribed, will be just and reasonable; and to the extent the classifications established by respondents are different and nonuniform, to that extent their existing classifications, as embraced within the Consolidated Freight Classification, are, and will be for the future, unjust and unreasonable in violation of section 1 (4) and (6) of the act.
6. That the findings as to uniformity are not intended to prevent establishment of exceptional classification ratings provided they are justified individually upon their own merits, do not violate the act, are not inconsistent with the national transportation policy, and do not tend to impair the general requirement of uniformity of classification.

63

7. That the general basis of the official classification, including the percentage relation between the classes, would be just and reasonable for application uniformly by respondents and should be established by them within a reasonable time.
8. That is it just and reasonable that a uniform classification should be established containing (*a*) classes, intermediate between the several classes in the official classification, corresponding to the columns prescribed in finding 1 in *Eastern Class Rate Investigation*, 164 I. C. C. 314, 373; 171 I. C. C. 481, 499; (*b*) the present regular classes which are multiples of class 1 (class 100); and (*c*) additional classes lower than the lowest class in the official classification. And that these classes in the uniform classification should be 30 in number ranging from class 400 to class 13.
9. That substantial uniformity exists in the present classifications as to descriptions of articles and carload minimum weights.
10. Respondents are given reasonable opportunity to initiate a lawful uniform classification before the Commission undertakes the task; respondents are expected to advise the Commission within 90 days from the service of this report whether they will undertake to make and tender a uniform classification based upon the findings herein. Jurisdiction retained to make such further order in the premises as may be proper in the event respondents decline to make and tender a uniform classification or omit to respond within the time specified.
11. That the uniform classification must be closely connected with the class scale or class scales of rates to be applied, to insure proper preservation of revenue for the carriers, and that the rates shall be just and reasonable and otherwise in conformity with the act.

PART II

Upon investigation in No. 28300 into lawfulness of interstate class rates, determined by ratings in official, Illinois, southern, and western classifications, applicable to transportation in interstate or foreign commerce of property by common carriers by railroad, by water, or partly by railroad and partly by water, subject to the Interstate Commerce Act, and the charges resulting therefrom, between all points in the United States except those in mountain-Pacific territory, found:

1. That the intraterritorial class rates (except as they apply to rail-and-water coastal service or relate to short- or weak-line arbitraries) applicable within official, Illinois, southern, southwestern, and western trunk-line territories, are, and for the future will be, unjust and unreasonable, in violation of section 1 (4) and (5) (a) of the act.
2. That the interterritorial class rates in issue in this proceeding applicable between official, Illinois, southern, southwestern, and western trunk-line territories, are, and for the future will be, unjust and unreasonable, in violation of section 1 (4) and (5) (a) of the act.
3. That the relation between the interterritorial class rates applicable from southern, southwestern, and western trunk-line territories to official and Illinois territories, on the one hand, and the intraterritorial class rates applicable within official and Illinois territories, on the other hand, makes, gives, or causes, and for the future will make, give, or cause, undue and unreasonable preference and advantage to official and Illinois territories as a whole and the shippers and receivers of freight located therein, and subjects, and for the future will subject, southern, southwestern, and

western trunk-line territories, as a whole, and the shippers and receivers of freight located therein, to undue and unreasonable prejudice and disadvantage, in violation of section 3 (1) of the act.

4. That a just and reasonable basis of class rates, not unjustly discriminatory or unduly preferential or prejudicial, to be observed by respondents with respect to the traffic described in findings 1, 2, and 3 immediately preceding, will be the following:

(*a*) The application, as a maximum for class 1, of the scale of rates shown in appendix 10.

(*b*) The rates herein prescribed are to be applied to the distances over the shortest possible rail routes by which carload traffic can be interchanged between carriers without transfer of lading.

(*c*) Class-rate scales, other than class 1, shall bear percentage relations to the class 1 rates, as found to be just, fair, and reasonable in part I hereof. Rule prescribed for the disposition of fractions.

(*d*) Key point class rates based on the scale herein found reasonable may be established subject to our approval between points where such rates were prescribed by us in the prior general class-rate revisions.

(*e*) Such class rates shall apply to the ratings of commodities taking class rates as the same shall be rated in the uniform classification found to be just, fair, and reasonable in part I hereof.

(*f*) Such revised uniform class rates and classification ratings shall be made applicable simultaneously.

PART III

Pending establishment of the rate revisions and classification unification contemplated by the findings in part I and part II hereof, certain readjustments in the existing basis of class rates are required which will be just and reasonable and will bring to the minimum the preferences and prejudices found to be unlawful, as completely as it is practicable now to eliminate such violations. It is found that, on and after the effective date of the order to be entered in this proceeding:

1. The existing interstate class rates applicable to freight traffic having at the classification ratings within southern, southwestern, and western trunk-line territories and interterritorially between those territories, and also between those territories and official territory, will be unjust and unreasonable unless reduced 10 percent, subject to specified distance rates as minima; but no changes in existing exception rates or column rates, or in groupings in connection with the present class rates, are contemplated by this finding.

2. Simultaneously as part of the adjustment, the existing applicable interstate class rates for freight traffic moving at classification ratings within official territory (including Illinois territory) should be increased 10 percent as maxima, in the manner specified in the report, and as so increased the class-rate scales will be just and reasonable; this finding is based in part upon the finding that the revenue needs of the carriers in official territory with respect to their class-rate traffic are greater than is the case as to class-rate traffic of the carriers in the other territories described.

3. The present minimum charge per shipment on less-than-carload shipments moving at class rates in the territory included in No. 28300, is less than a just and reasonable minimum charge to the extent that it is less than

75 cents; and 75 cents is a just and reasonable minimum charge on such shipments.

T. P. Healy, J. F. Eshelman, H. L. Walker, W. L. Grubbs, Charles Clark, F. W. Gwathmey, E. J. Zoll, Jr., W. T. Hughes, J. P. Plunkett, J. R. Bell, D. T. Smith, H. C. Barron, C. T. Abeles, B. F. Batts, J. G. Blaine, H. E. Boe, R. E. Boyle, Jr., H. D. Boynton, R. D. Brooks, W. M. Crandall, J. P. Canny, Henry Christianson, J. Cibulka, P. H. Daniel, A. J. Dixon, A. P. Donadio, E. H. Dulaney, C. S. Edmonds, A. B. Enoch, C. L. Ewing, J. A. Fisher, J. E. Flansburg, W. S. Flint, R. C. Fyfe, J. P. Ganly, P. F. Gault, J. A. Gillen, L. J. Gosney, H. L. Hanes, J. P. Harrington, H. J. Hart, N. W. Hawkes, J. W. Hewitt, E. A. Hodkinson, G. W. Holmes, E. J. Hyett, George Jeck, Denver Jordan, W. J. Kelly, C. B. Kerr, J. G. Kerr, L. E. Kipp, W. F. Knobeloch, H. H. Larimore, D. R. Lincoln, J. R. MacAnanny, J. C. McGohan, H. H. McLean, T. H. Maguire, E. M. Martin, Richard Musenbrock, L. S. Nichols, W. A. Northcutt, L. R. Nowotny, Conrad Olson, Guernsey Orcutt, A. E. Pfaff, C. P. Reynolds, V. A. Roane, M. G. Roberts, G. A. Ryser, D. T. Smith, E. A. Smith, William Spaulding, H. E. Spencer, B. H. Stanage, R. S. Stephenson, C. L. Taylor, Robert Thompson, L. A. Veroneau, G. L. Vivian, H. W. Ward, C. H. Ware, W. W. Wolford, and *D. L. Younger* for respondent class I railroads.

C. A. Miller for respondent members of American Short Line Railroad Association.

N. D. Belnap and *F. W. Sullivan* for certain respondent water carriers.

O. L. Huntsman for Office of Price Administration and Director of Economic Stabilization; *G. L. Wilson* and *W. C. Parks* for Office of Price Administration; *C. R. Nutting* for War Food Administrator; *J. K. Knudson* and *Fletcher Quillian* for United States Department of Agriculture; and *W. C. Fitts, Jr., C. J. McCarthy, R. H. Marquis, R. H. Sheppard*, and *A. D. Spottswood* for Tennessee Valley Authority.

H. E. Foley for Governors of all New England States; *W. R. McDonald, Hugh White, J. W. Carter, W. O. Martin, Greek Rice, Stanley Winborne, J. W. Wolfe, H. A. Manning*, and *Porter Dunlap* for Southeastern Association of Railroad and Utilities Commissioners; *Prentice Cooper, J. M. Broughton, J. Y. Norman* and *W. H. Wagner* for Southern Governors' Freight Rate Conference, representing States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee; and *J. C. Murray, C. B. Bee, B. M. Gray, C. C. Cammack, P. A. Frye, R. D. Moorhead, A. J. Scriener*, and *E. R. Tanner* for Steering Committee of Southwestern States and Kansas.

Tom Stewart, United States Senator from Tennessee.

Hugh White for Alabama Public Service Commission; *A. A. Betts*, *H. G. Freas*, *William Peterson*, *L. G. Reif*, and *W. T. Wright* for Arizona Corporation Commission; *H. A. Adkins* for State of Arkansas; *J. C. Murray* and *T. E. Wood* for Arkansas Corporation Commission; *E. S. Reed* for Arkansas Agricultural and Industrial Commission; *L. R. Wood* for Arkansas State Highway Commission; *R. L. Riley* and *H. G. Freas* for California State Railroad Commission; *H. S. Sherman* and *T. S. Wood* for Colorado Public Utilities Commission; *S. L. Holland*, *F. C. Hillyer*, *J. W. Carter*, *T. C. Maurer*, *T. T. Turnbull*, and *I. T. Williams* for State of Florida and Florida Railroad Commission; *F. E. Harrison, Jr.*, for Governor of Florida and Florida State Road Department; *Fred Pettijohn* for Florida Railroad Commission; *W. R. McDonald* for Georgia Public Service Commission; *H. A. Hollopeter* for Governor of Indiana; *Walter Condran* and *J. A. Lucas* for State of Iowa and Iowa State Commerce Commission; *H. E. Davidson*, *C. W. Reed*, *C. B. Ellis*, and *W. A. McClintock* for Iowa State Commerce Commission.

B. M. Gray for Kansas Corporation Commission and Kansas Industrial Development Commission; *C. S. Hunter* for Kansas Corporation Commission; *E. S. Durrmit*, *Hubert Meredith*, *M. B. Holifield*, and *L. F. Orr* for Commonwealth of Kentucky, *F. L. McCarthy*, *J. E. Fisher*, *Mrs. J. W. Langley*, *C. M. Bishop*, *J. E. Marks*, and *R. E. Webb* for Kentucky Railroad Commission; *P. A. Frey* and *L. F. Sherer* for State of Louisiana and Louisiana Public Service Commission; *W. O. Martin* for Louisiana Public Service Commission; *W. C. Walsh* for State of Maryland; *A. O. Graves* for Michigan Public Service Commission; *L. R. Bitney* and *O. A. Radke* for State of Minnesota and Minnesota Railroad and Warehouse Commission; *P. R. Moore*, *E. A. Nightingale*, and *R. E. Wilson* for Minnesota Resources Commission; *Greek Rice* for Mississippi Public Service Commission; *B. R. Gillespie*, *H. F. Cholet*, *J. D. James*, and *W. A. Weeks* for Missouri Public Service Commission.

H. E. Kokjer, *Edwin Vail*, *F. A. Good*, *J. A. Little*, *D. T. Swanson*, *W. R. Johnson*, and *H. C. King* for Nebraska State Railway Commission; *C. B. Sexton* for Nevada Public Service Commission; *D. T. Wilentz*, *Robert Peacock*, and *C. V. Paulon* for State of New Jersey; *Robert Peacock* for Governor of New Jersey and New Jersey Board of Commerce and Navigation; *Parker McCollester*, *C. E. Bell*, *J. J. Bennett, Jr.*, *F. J. Clark*, *Timothy Cohan*, and *N. L. Goldstein* for State of New York; *L. J. Dorr* for New York State Department of Agriculture and Markets; *Stanley Winborne* and *H. M. Nicholson* for North Carolina Utilities Commission; *N. E. Williams* and *A. C. Stratz* for State of North Dakota; *R. C. Larkin*, *S. S. McDonald*,

C. W. McDonnell, J. M. Agrey, and *C. F. Kelsch* for North Dakota Public Service Commission.

T. J. Herbert and *K. L. Sater* for State of Ohio; *C. B. Bee* and *Bennett Rond* for Oklahoma Corporation Commission; *Edward Martin, E. A. DeLancy,* and *J. H. Duff* for Commonwealth of Pennsylvania; *J. W. Wolfe* for South Carolina Public Service Commission; *H. A. Manning* for South Carolina State Ports Authority; *William Williamson* and *C. A. Carr* for South Dakota Public Utilities Commission; *Porter Duntap* and *J. O. Headley* for Tennessee Railroad and Public Utilities Commission; *Grover Sellers, R. D. Moorhead, G. C. Mann,* and *C. C. Cammack* for State of Texas; *B. H. Jester, Olin Culberson, E. O. Thompson,* and *A. J. Scrivener* for Texas Railroad Commission; *C. A. Root* for Utah Public Service Commission; *H. E. Kelner* for Virginia State Corporation Commission; *P. H. Porter, C. E. Schreiber,* and *I. A. Sherman* for Wisconsin Public Service Commission; and *N. F. Bahrenburg* for Wyoming Public Service Commission.

D. H. Berry for city and port of Beaumont, Tex.; *H. W. Wagner* for Norfolk, Va., Port Traffic Commission; *Herman Mueller* for St. Paul, Minn. Port Authority; and *T. J. McGinn* for Savannah, Ga., Port Authority.

P. H. Porter, G. M. Cummings, J. R. Davy, Allen Dean, F. A. Dobbler, R. A. Ellison, Carl Giessow, A. O. Graves, H. A. Hollopeter, J. A. Jacobson, J. V. McMahon, H. B. McNeely, K. A. Moore, D. G. Moore, W. H. Ott, H. J. Schroeder, and *A. H. Schwietert* for Central Territory Rate Conference; *A. H. Schwietert* for Illinois Territory Traffic League; *W. H. Bay, A. H. Ferguson,* and *H. E. Foley* for New England Traffic League; and *W. S. Creighton, J. H. Donnell, T. M. Henderson,* and *E. D. Wood* for Southern Traffic League.

M. S. Allison, T. R. Atchison, W. P. Aughnay, E. J. Bachman, C. G. Baker, D. A. Bandeen, G. W. Baxter, C. S. Belsterling, I. G. Bentley, E. H. Berg, D. H. Berry, A. F. Bocher, R. F. Bohman, Isaac Born, G. P. Boyle, Freeman Bradford, H. R. Brashear, A. H. Brown, J. E. Bryan, W. C. Bulette, J. S. Burchmore, W. G. Burnette, F. W. Burton, E. P. Byars, F. A. Cameron, K. S. Carberry, C. E. Childe, C. A. Clymp, G. C. Cochran, H. J. Conley, C. S. Connally, C. H. Cook, A. B. Costello, W. S. Creighton, G. M. Cummings, C. R. Cunningham, G. H. Cunningham, E. P. Daspit, L. F. Daspit, J. M. Davison, J. R. Davy, W. H. Day, Allen Dean, F. L. DeGroat, C. L. Dodge, Jr., E. S. DePass, M. L. Dickerson, F. A. Doebler, Charles Dooley, J. H. Donnell, J. F. Dougherty, T. A. Durrant, W. M. Dyer, H. C. Eargle, C. J. Edelmann, C. E. Elerick, R. A. Ellison, M. M. Emmert, H. B. Fritz, C. L. Fenstermaker, A. H. Ferguson, H. J.

Fernandez, R. L. Flynn, H. E. Foley, S. L. Foote, N. W. Ford, C. E. Fowler, A. W. Fox, H. M. Frazer, W. E. Gayle, H. W. Gehrke, Carl Giessow, Earl Girard, W. W. Glenn, L. A. Gossage, T. E. Grady, William Graf, A. O. Graves, H. A. Gray, P. F. Guerke, W. A. Gunn, G. E. Griffith; G. O. Griffith, J. R. Hafstrom, J. J. Hailey, H. V. Haley, H. M. Hancock, C. V. Hanlon, C. A. Hansen, C. J. Harriss, E. L. Hart, E. T. Hayes, J. P. Haynes, E. D. Hedstrom, C. O. Heinley, R. J. Henderson, T. M. Henderson, W. H. Hendling; C. C. Hibbard, J. K. Hiltner, E. M. Hinkle, J. J. Hoban, H. A. Hollopeter, L. A. Howe, A. E. Huneryager, H. G. Hühn, H. Ignatius, J. C. Iselin, P. T. Jackson, J. A. Jacobson, C. E. Jones; Elmer Jones, J. B. Jones, W. R. Johnson, T. F. Kator, H. G. Kazanjean, R. K. Keas, F. A. Keiser, F. W. Kemp, W. H. Kimball, L. O. Kimberly, Jr., H. C. King, Donald Kirkpatrick, W. W. Klingensmith, H. F. Klocker; H. E. Kokjer, H. L. Krogman, Leslie LaCroix, Wilbur LaRoe, Jr., R. J. Laubenstein, C. D. Laylin, E. F. Ledvidge, G. M. Leedom, H. D. Lorance, J. W. Lowry, L. E. Luth, T. F. Lynch, R. A. McCaffrey, Parker McCollester, B. J. McHugh, E. B. McKinney, J. V. McMahon, M. J. McMahon, H. B. McNeely, G. E. Mace, T. W. Mackey, J. C. Magness, H. E. Manghum, J. G. Mann, M. A. Manning, G. E. Martin, T. C. Mauver, Ralph Merriam, R. I. Miles, C. A. Mitchell, E. A. Momberger, L. F. Mongeon, A. G. T. Moore, K. A. Moore, D. O. Moore, E. G. Moore, W. A. Moore, R. A. Morin, R. L. Murphy, H. D. Musick, P. J. Naughton, C. A. New, G. A. Nimmo, J. H. Noble, F. E. Norton, O. W. O'Berg, L. M. O'Leary, M. J. O'Mahoney, G. W. Orewiler, L. F. Orr, W. H. Ott, Jr., W. A. Palmer, F. L. Partridge, G. A. Pendleton, M. D. Perry; W. J. Petersen, M. L. Pieper, C. G. Plowman, P. H. Porter, R. A. Potter, F. E. Potts, A. B. Pratt; L. W. Pyeetorius, J. H. Raaney, A. A. Raphael, H. T. Ratliff, C. F. Real, B. E. Reed, F. M. Reishaw, A. J. Ribe, W. E. Rosenbaum, W. W. Rouse, F. L. Rutand, J. C. Ryan, R. D. Ryder, V. Schaffenburg; H. J. Schroieder, R. L. Schulz, Ted Schwachhofer, L. A. Schwartz, A. H. Schwietert, W. R. Scott, C. R. Seal, G. H. Shafer, O. J. Shafer, L. M. Shepardson, B. C. Sheron, P. J. Slattery, C. R. Smith, R. H. Smith, G. M. Springer, Jr., E. F. Stecher, H. G. Stern, H. F. Sundberg, G. F. Talley, E. R. Tanner, J. H. Tedrow, C. B. Tefft, R. H. Thompson, E. H. Thornton, T. W. Titsworth, F. B. Townsend, W. A. Vahle, Edwin Vail, Harry Van Antwerp, A. E. Versen; H. F. C. Wade, W. H. Wagner, S. T. Watkins, O. H. Weaver, W. M. Whacton, C. E. Widell, R. B. Willard, N. E. Williams, S. H. Williams, W. A. Williamson, E. B. Wilson, E. D. Wood, and W. M. Wood for other shipper interests.

J. R. Arney, A. L. Reed, C. E. Cotterill, C. H. Anderson, F. P. Aughinay, C. E. Bellew, Ferdinand Born, G. M. Brewer, J. A. Con-

nors, K. G. Foster, Jr., L. E. Golden, J. D. Hughett, C. F. Jackson, R. W. LaTourette, Donald MacLeay, C. G. Moore, C. R. Morrow, G. D. Rives, H. M. Sell, F. F. Shields, George Shuler, Jr., W. R. Staggs, D. C. Stone, D. T. Waring, and *Edgar Watkins, Jr.*, for motor carriers and their associations.

B. L. Smelker for Interstate Commerce Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

We have had the benefit of oral argument. Statements of matters of fact in this report are to be considered as findings by us, except when it is clear that we are merely reciting issues raised or contentions made by the parties, or are summarizing evidence adduced.

Two proceedings, allied, and heard and submitted together, are embraced in this report. Both are investigations on our own motion instituted by our orders of July 29, 1939, as modified August 1, 1940. No. 28310 is an investigation of the lawfulness of the description of articles, carload minimum weights, and ratings provided in the consolidated freight classification, containing the ratings on articles so described in official, Illinois, southern, and western classifications, applicable to the transportation of property in interstate or foreign commerce by common carriers by railroad or water, or partly by railroad and partly by water, subject to the Interstate Commerce Act. Its territorial scope is the entire United States. All common carriers engaged in the transportation described above were made respondents.

Docket No. 28300, Class Rate Investigation, 1939, concerns the lawfulness of interstate class rates[1] all-rail, all-water, and rail-and-water, applicable in the United States generally, except in mountain Pacific territory and between that territory and the remainder of the country. As modified by order of August 1, 1940, it includes all rates determined by ratings in the four classifications named above, irrespective of whether the ratings are stated under the regular numbered or lettered classes or as percentages of first class, but none other. It does not embrace exceptions to the classifications.

The two complementary related investigations were heard simultaneously before division 2 of the Commission, to which the proceedings were assigned for administrative handling, at St. Louis, Mo., on July 10 and 11, 1941, Indianapolis, Ind., September 22 to October 1, 1942, Columbus, Ohio, November 16 to 27, 1942, and Washington, D. C., March 29 to April 1, 1943. All the States were notified of the pendency of the proceeding. In accordance with section 13 (3) of

[1] Rates are stated in this report in cents per 100 pounds.

the act, we sought the cooperation of the State commissions. Their committee, consisting of Commissioners McConaughey of Ohio, Scott of South Carolina, and Murphy of South Dakota, sat with division 2 throughout the St. Louis, Indianapolis, and Columbus hearings, and the two commissioners first named with Commissioner Doherty of South Dakota sat with the division at the Washington hearing and with us at the oral argument, which was held at Washington, June 14 to 23, inclusive, 1944. A very large number of briefs were submitted. A proposed report in No. 28310 was served upon the parties. Numerous exceptions and replies filed have been considered. No proposed report was served in No. 28300.

Because of the magnitude and complexity of the issues in these proceedings, certain steps preliminary to the commencement of hearings were taken by division 2. On January 9, 1940, a notice was issued to the parties and to the public, stating the broad objectives of the investigations, listing some, but not all, subjects to be explored, and suggesting the assembling and compiling of data pertinent to the issues. Among the subjects named for consideration was whether the establishment throughout the United States of a rail and water freight classification, simplified and uniform, or more nearly uniform when compared with the existing classifications, would be lawful and practicable. The notice was accompanied by an order in both proceedings requiring respondents to compile and furnish information concerning traffic moved on specified days in 1939, and an order in docket No. 28310 requiring respondents to compile and furnish specified information relating to the classification of freight. These orders were subsequently vacated, the latter because respondents agreed to furnish the information required without an order, and the former because of the difficulty under conditions then existing owing to the national emergency, and the expense and delay in obtaining and compiling the information sought. The public was informed that certain studies to be prepared by our staff would be offered in evidence at subsequent hearings by qualified witnesses.

A prehearing conference, attended by upwards of 400 persons, was held in Chicago, Ill., on October 28 and 29, 1940. The purpose thereof was to develop more clearly the matters in issue, the particular phases of the general subjects designated in the orders of investigation to be first explored, and to give direction to the studies and research of the interested parties. All persons attending were afforded an opportunity to be heard and to discuss the matters considered. The general opinion of the conference was that the order requiring the compilation of traffic data should be rescinded, and, as stated, that was done by order of November 25, 1940.

Certain studies prepared by our staff were made available to the parties and the public prior to and during the course of the hearings, and were received in evidence.

Numerous petitions were filed by respondents and other interests seeking the discontinuance or indefinite postponement of these proceedings until after the emergency caused by the war. They were all denied. The State of Ohio moved that those petitions be reconsidered and sustained; and the Wisconsin commission and Wisconsin Manufacturers' Association referred to their concurrence in the petitions and reiterated their opinion that the investigations should be discontinued or postponed until after the war. The motion is overruled.

We will report first upon the issues raised with respect to classification in No. 28310, although it is impossible to consider such issues as wholly distinct from intermingled issues raised in the related class rate proceeding, No. 28309. The following, therefore, will constitute Part I of the general report in both proceedings.

PART I

CLASSIFICATION OF FREIGHT

Each of the three major classifications, official, southern, and western, has both intraterritorial and interterritorial application. They contain rules and other provisions relevant to traffic generally, and set forth the ratings for ascertainment of class rates, wherever such traffic and rates are made subject to the respective classifications by specific reference thereto in the rate tariffs. Usually the tariffs are subject also to publications, entitled exceptions to a particular classification, which contain rules, provisions, and ratings more liberal to shippers than, and take precedence over, the classification. Many of them apply throughout an entire classification territory. In addition, there are often commodity rates that take precedence over both the classifications and exceptions as to particular articles.

Illinois classification is used in the border area between official and western classification territories. It has rather limited interstate application and none as to interterritorial traffic. At present it governs, besides Illinois intrastate traffic, the class rates between Illinois and points in the Indiana portion of the Chicago switching district, and traffic between Illinois points traversing routes partly in Indiana on which it authorizes charges over intrastate routes between the same Illinois points lower than what the corresponding charges would be at interstate rates governed by official classification.

Intraterritorial application.—The boundaries of the territories within which the respective classifications have intraterritorial appli-

cation are roughly sketched on the map of the United States, appendix 1 to this report.

Official classification applies between all points in the part of the country known as official territory, which may be described as lying generally east of the following line: Lake Michigan, including west-bank car-ferry ports on official-territory traffic, south to Milwaukee, Wis., thence the line of the Chicago, Milwaukee, St. Paul & Pacific Railway (the Milwaukee) to Rugby Junction, Wis., thence the line of the Minneapolis, St. Paul & Sault Ste. Marie Railway to Duplainville, Wis., thence the line of the Milwaukee through Watertown to Madison, Wis., thence the line of the Chicago & North Western Railway to Dodgeville, Wis., thence the line of the Illinois Central Railroad to the Illinois State line and west along the latter to the Mississippi River, thence south along that river, including west-bank crossing points on official-territory traffic, to the Ohio River; and lying generally north of the following line: The Ohio River east from its mouth, including south-bank crossing points on official-territory traffic, to Cincinnati, Ohio, thence east on the line of the Chesapeake & Ohio Railway to Kenova, W. Va., thence on the main line of the Norfolk & Western Railway to its crossing with the line of the Virginian Railway west of Roanoke, Va., thence on the Virginian Railway to Suffolk, Va., thence on the main line of the Norfolk & Western to Norfolk, Va., including also all lines of the Chesapeake & Ohio Railway in Kentucky and all lines of the Norfolk & Western Railway except those extending south from Roanoke, Va., to Winston-Salem, N. C., and from Brookneal, Va., to Durham, N. C. This territory, sometimes referred to as official-Illinois territories, embraces New England, trunk-line, central, and Illinois traffic territories, and comprises roughly 14 percent of the land area of continental United States, excluding Alaska, which may for brevity be termed "the country."

Southern classification applies between all points in the part of the United States, called southern territory, which contains about 13 percent of the country's land area, lying south of official territory and east of the Mississippi River, including north-bank Ohio River and west-bank Mississippi River crossing points on southern territory traffic.

Western classification applies between all points in the part of the United States, termed western territory, lying west of official and southern territories, including east-bank Mississippi River points on western territory traffic. It encompasses western trunk-line, southwestern, and mountain-Pacific rate territories, and approximately 73 percent of the land area of the country.

Interterritorial application.—In the several comprehensive class-rate investigations made over a number of years, we have prescribed

which of the classifications should govern the interterritorial rates required between the rate territories lying roughly east of the Rocky Mountains, and, on complaints, to some extent from west thereof. However, long before those proceedings the carriers of necessity had subjected to one or the other classification the many interterritorial single-factor rates they had voluntarily established. Without attempting the detailing of extraordinary situations, the present interterritorial applications of the classifications are in general as follows, which applications are graphically portrayed on appendix 1 to this report:

Official classification governs class rates from western trunk-line territory, including the Northwest,[2] Wyoming, Utah common points, and intermediate Utah stations east of those points, to official territory east of Illinois; from official territory east of Illinois to the Northwest; and between official territory and certain points on the Chesapeake & Ohio and Norfolk & Western railways in northeastern Kentucky and southwestern Virginia.

Southern classification governs class rates between official territory, including west-bank Lake Michigan ports, and southern territory, except as to the Kentucky and Virginia points noted above in connection with official classification; and from western trunk-line territory, including the Northwest and southern Missouri, to southern territory.

Western classification governs all through class rates between mountain-Pacific territory, including transcontinental traffic, and official and southern territories, except from Wyoming and Utah as stated above in discussing official classification; from official territory to western trunk-line territory, except the Northwest; between southern Missouri and official territory; from southern territory to western trunk-line territory, including the Northwest and southern Missouri; from western trunk-line territory to Illinois territory, which comprises Illinois and southeastern Wisconsin embraced in official territory; and between southwestern territory and official and southern territories.

Owing to the differences, often substantial, measured by relations to corresponding first-class rates in the particular territories, caused by the varying ratings in the respective classifications, difficult situations occur from subjecting interterritorial class rates to a classification other than that applicable within one of the territories involved. Sometimes a classification determines the rates applying over direct routes passing through all three classification territories, adding to the difficulties. Where a classification has been prescribed on the destination-territory

[2] The term "Northwest" is the designation used herein for that part of western trunk-line territory on and east of the Northern Pacific Railway from Duluth to Hinckley, Minn., thence the Great Northern Railway to Twin Cities, Minn., thence east of the Mississippi River but including west-bank crossing points. It thus includes a narrow strip of Minnesota, Wisconsin except a part in Illinois territory, and the Upper Peninsula of Michigan.

principle later described, different rates result in opposite directions between the same points, and over the same routes, on classes that do not bear like percentage relations to the corresponding first-class rates in the two territories concerned.

EFFORTS TO PROMOTE UNIFICATION OF CLASSIFICATIONS

Beginning with the year 1887, and continuing to the present time, we have endeavored to promote the unification of freight classifications throughout the United States. Efforts during the first 25 years are narrated in some detail in *Western Classification Case* (1912), 25 I. C. C. 442, 459. In that report we spoke of the multiplicity of varying classifications then prevailing, and condemned them as a public evil that caused confusion and constant embarrassment in the interchange of freight between railroads. As there stated, we, in our first annual report (1887) to the Congress, commended the work of the railroads in reducing the great number of classifications then in effect,[3] characterizing it to be "extremely important and useful," but emphasized the necessity of a single classification for the entire country. The importance and practical necessity of uniformity were reiterated in succeeding annual reports. The desirability of a uniform classification has been urged repeatedly by State railroad commissioners at their annual conventions, by shippers' organizations, and by some railroad officials. Always we have been concerned with the just complaints from shippers against disadvantages they suffered because of inconsistencies and divergencies in classifications.

Although we insistently pressed and encouraged unification in every way possible, and made suggestions toward that end, throughout the years reviewed in the above report (25 I. C. C. 442), we adhered to the opinion that the actual work of unification could be undertaken best by the carriers themselves. We recognized fully the great difficulties to be overcome, but declared that they are not insurmountable to carriers' specialists of long experience in work of this sort, and that unification is practicable. Cognizance was taken of the obvious fact that the merging of ratings would necessitate mutual concessions from shippers and carriers; in that the effect must be to lower the ratings on some articles of commerce, and to increase them upon others. Opposition was expected from interests that would be unfavorably affected.

Continuing in *Western Classification Case, supra*, we said that during the years prior to 1888 "the movement toward uniformity seemed to

[3] Individual railroads would have two or more classifications in effect. One for local traffic in one direction, one for through traffic in one direction and another for that in the opposite direction, and a fourth, perhaps, for traffic from or to a particular section of the country. One railroad had nine different classifications in effect in 1883 for traffic originating on its line.

give promise for the establishment of a single classification for the entire country"; but that in the fifth annual report (1891) we recorded the failure of the carriers to adopt the uniform classification proposed by their committee in 1890, and recommended to the Congress the passage of an act "requiring the adoption within one year from the date of its passage of a uniform classification of freight by the carriers subject to the act." * * Much additional history was recited, embracing pertinent quotations from a number of annual reports, detailing our persistent endeavor to promote uniformity.

Until the *Consolidated Classification Case* (1919), 54 I. C. C. 1, official, southern, and western classifications were published as separate issues, each with its individual set of rules, descriptions of articles, and ratings. In that report we again adverted to our annual reports to the Congress mentioning our efforts to stimulate the work in the direction of greater uniformity in freight classifications. In view of the progress made, it had been apparent early in 1918 that a complete unification of the rules and descriptions of articles in the three major classifications was possible at a not distant date, and we "inquired of the carriers why they could not by January 1, 1919, or sooner, effect a consolidation of the three general classifications into one volume containing one set of uniform commodity descriptions with three rating columns, one for each territory, subtended, and with one set of rules."

This occurred during World War I and the period of Federal control of the principal railroad lines of the country by the United States Railroad Administration, whose director of traffic appointed a small committee, of which our classification agent became a member, to carry out the work. That committee submitted a "Proposed Consolidated Freight Classification No. 1" in one volume, which accomplished the consolidation and uniformity to the extent suggested by us, and in addition contained many proposed changes in the ratings. Upon request of the Director General of Railroads for recommendations as to the advisability of adopting the proposed classification for application by the carriers under Federal control, *Consolidated Classification Case*, *supra*, was instituted to inquire into the reasonableness and propriety of that classification, and all carriers subject to the act, not under Federal control, were made respondents.

We said in the report last cited, on page 3:

> The consolidated classification is the result of effort toward uniformity extending over a long term of years, and since uniform rules and descriptions are necessary before uniformity in ratings is possible, it marks an important step toward a uniform classification.

* That recommendation, repeated in subsequent annual reports, was not adopted. Amendments of the act, sections 1 and 15, June 18, 1910, first inserted in terms a requirement for the maintenance of lawful classifications of freight by the carriers.

With regard to the ratings in the proposed classification, we said, page 4:

> There was no concerted effort [by the carriers' committee] to make the ratings uniform, but the desirability of uniformity seems to have been kept in mind. * * *

At page 9 we stated:

> The fact that a uniform classification would be a convenience is a consideration of relatively minor importance; we have advocated uniformity because it is an essential part of the general scheme which contemplates greater consistency in rate making and elimination of discriminations and inequalities. * * * In large part different ratings in the three territories are not due to actual or substantial differences in circumstances and conditions, but are the result of mere differences of opinion and the natural inclination of traffic officials to give expression to their respective theories of classification.

Although no recommendation was made regarding ratings, we tentatively suggested a 10 class (for first class and lower) classification for the entire country, and the percentage relations for the 10 numbered classes in rate scales.[5] The opinion was expressed, at page 11, that "an absolutely uniform classification could be prepared and proposed only in connection with a universal system of rate scales having a uniform number of classes."

The general conclusions reached in that proceeding, page 71, were that:

> So far as rules, descriptions, packing specifications, and [carload] minimum and estimated weights are concerned, and subject to the modifications thereof indicated in this report, we recommend the adoption of the consolidated classification for application in lieu of the present official, southern, and western classifications by carriers under federal control. We do not recommend any changed ratings except as the establishment of new items may indirectly effect changes, and such as may be a reasonably necessary part of the establishment of uniform descriptions, specifications, or minimum weights.
>
> The same rules, descriptions, packing specifications, and minimum and estimated weights subject to the same modifications and limitations are, tentatively, and without prejudice, found just and reasonable for carriers not under federal control.

The new consolidated classification, conforming generally to our recommendations, was published by the carriers and became effective December 30, 1919.

Uniformity was also recommended by us to the Director General of Railroads, responsive to his request for advice, in *Illinois Classification* (1919), 55 I. C. C. 290, as to the rules, and items of descriptions of articles, packing specifications, and carload minimum and estimated

[5] The classes and percentages tentatively suggested were as follows:

Classes	1	2	3	4	5	6	7	8	9	10
Percentages	100	85	70	60	45	35	30	25	22½	20

weights, of the Illinois classification[6] to correspond with those approved, as modified, in *Consolidated Classification Case, supra.* After conferences between the shippers and carriers, in which we and the Public Utilities Commission of Illinois participated, the separately published Illinois classification was revised, not only as to the rules and article descriptive items along the line of the consolidated classification, but also as to ratings. In most instances, the same ratings as in official classification were established, except when the competition encountered by the Illinois shippers came from western territory, in which event the western classification rating was adopted. (Thirty-fourth annual report of the Commission, 1920, page 40.) The Illinois classification was merged in the consolidated classification, effective November 15, 1933.

In annual reports to the Congress subsequent to the establishment of the consolidated classification we frequently commented upon the matter of uniformity, sometimes commending the carriers for the progress made, often giving the number of changes and occasionally specifying the degree of uniformity accomplished[7] and sometimes remarking that the progress has been slow, but always indicating our desire for completion of the task within a reasonable time. The showing of official, southern, and western classification ratings in parallel columns of the consolidated classification was noted as serving in striking fashion to bring inconsistencies to the attention of shippers and carriers, and as being a strong influence toward uniformity.

Once we suggested to carriers the advisability of proceeding more slowly just at that time with respect to unifying ratings that would cause large rate increases, because of the coinciding general increase of 1920 in rate levels by substantial percentages, but said that any changes made should be toward uniformity. Carriers heeded the suggestion. After the general rate reduction of 1922, we remarked upon the accelerated pace in unifying ratings, even though some changes meant only the merging of ratings as to two of the classifications. Also in the 1923 annual report we spoke approvingly of the establishment of less-than-carload and carload ratings in lieu of any-quantity ratings, especially in southern classification, which was characterized as having been an any-quantity classification in the past.

[6] The Illinois classification governed tariffs making reference thereto, and at that time applied generally to traffic between points in Illinois, and between Illinois and points on west bank of the Mississippi River in Iowa and Missouri, in southeastern Wisconsin, and in Indiana on interstate routes between Illinois stations.

[7] Unification achieved of any-quantity and less-than-carload ratings combined in the three classifications, beginning with the establishment of the consolidated classification in 1919, was given in the fifty-first annual report (1937) as follows: Year 1919, 31.3 percent; 1922, 39.01 percent; 1927, 42.0 percent; 1932, 59.13 percent; and 1937, 86.0 percent. Nonuniformity of such ratings as to all three classifications was 14.7, 12.65, 11.0, 6.15, and 2.2 percent, respectively. The percentage just stated represented only 204 of the 5,251 ratings.

Reference was made in the thirty-ninth annual report (1925) to the prescription for the first time of uniform percentage relations for the former 10 classes, and the 2 additional classes created by us, in *Southern Class Rate Investigation* (1925), 100 I. C. C. 513, for class rates applicable throughout southern territory and between that and official territory. In the forty-first annual report (1927) reference was made to the fact that similar action had been taken in *Consolidated Southwestern Cases* (1927), 123 I. C. C. 203, as to the usual 10 classes, governed by western classification, prescribed for application throughout southwestern territory and between that and the territories north and east thereof extending to the entire Atlantic seaboard. The percentages prescribed for the upper classes in the latter proceeding were the same as those in the former, permitting unification of ratings in western and southern classifications, particularly for less than carloads, and correction of numerous cases of undue prejudice and preference on traffic between the South and Southwest or in either of the competitive channels on the east and west banks of the Mississippi River, which divides those territories; but the issues in the latter proceeding, and the difference in the number of classes, prevented uniform percentage relations for the lower classes.

In our forty-third annual report (1929) we mentioned pending complaints from North Carolina and Kentucky as to interterritorial rates, due to the location of those States immediately south of official territory where a classification prevailed differing radically from that in southern territory. The opinion was expressed that the comprehensive class-rate revisions in various parts of the country in process then and in the preceding few years would improve the situation, "but eventually it may be necessary to give it further attention and to consider even the advisability of bringing about substantially complete uniformity in classification throughout the country."

The filing of tariffs, effective December 3, 1931, pursuant to *Western Trunk Line Class Rates*, 164 I. C. C. 1, and *Eastern Class Rate Investigation*, 164 I. C. C. 314, was recorded in the forty-fifth annual report (1931). The former decision prescribed class rates within western trunk-line territory and between that and official territory, and the latter between all points within official territory including Illinois. It was stated in the annual report, page 66, that the rates prescribed for the various classes in official territory would, for the first time, bear a fixed relation to each other. It was further stated, at page 67, that:

> Further study of the subject of classification uniformity and the experience which we have gained in recent years in fixing class rates make it increasingly apparent that, while complete unification and merger of the Southern and Western Classifications is possible, such unification cannot be fully extended to embrace

the Official Classification unless and until there is a closer alignment of the basic rate structures, as between official territory and the other sections of the country, than it has so far been found practicable to accomplish, although revisions heretofore required by us have been in that direction.

In many reports we have reiterated our stand for unification of ratings in the diverse classifications. Illustrative are decisions requiring revisions of class rates throughout extensive classification territories, adjoining others with greatly varying ratings, as well as class rates for interterritorial application, usually for the first time displacing former combinations containing, as factors, territorial rates subject to different classifications. In each proceeding it was necessary, of course, to decide upon a single classification to govern interterritorial through rates. This presented a difficult problem arising from the fact that whichever classification was prescribed would conflict sharply, or in some measure, with the classification applicable in one of the territories affected.

In one of these reports, *Southern Class Rate Investigation*, *supra*, after discussing difficulties in determining interterritorial rates, especially to and from border zones embracing North Carolina and Kentucky, it was stated, at page 667, that:

until materially greater progress has been made towards harmonizing the radically different rates and classifications applied within official and southern territories, respectively, complications in the interterritorial adjustments will be inevitable.

In *Consolidated Southwestern Cases*, *supra*, where western classification was decided upon to govern class rates between the Southwest and western trunk-line, southern, and official territories, we said, at page 398:

For years we have endeavored to promote uniformity in classifications. Except for unification of rules and commodity descriptions, the progress in that direction has not been encouraging * * * So long as vital differences in classification exist it is impossible to bring about uniform class percentages throughout the country. But, on the other hand, until the class percentages are made more nearly uniform, progress toward uniform classification is impeded. We believe that in every such general proceeding as the present, such progress toward uniformity in this direction should be made as is possible.

In another proceeding of this character, *Western Trunk Line Class Rates*, *supra*, it was declared, at page 217, that:

This record further demonstrates the need for uniform classification ratings throughout the country. One of the beneficial results of these extensive investigations, in which joint interterritorial class rates governed by one classification are prescribed between major rate territories within each of which different classifications exist, should be the hastening of the much desired uniformity of rating.

Western classification had been prescribed in the original report in *Western Trunk Line Class Rates*, *supra*, to govern interterritorial class rates in both directions between western trunk-line and official territories. In the sixth supplemental report in that proceeding (1934), 204 I. C. C. 595, for the first time we found necessary the prescription of the governing classification according to the classification applicable in the destination territory, in order to remove relative unreasonableness and undue prejudice as to the east-bound rates generally, which thus became subject to official classification. It had been found that "Unquestionably the ratings in official are on the whole more favorable from the shippers' viewpoint than those in western." (See page 671.)

On reconsideration of the original report in *Western-Southern Class Rates* (1938), 226 I. C. C. 497, in which the destination-territory classification principle was adhered to for governing class rates between western trunk-line, including southern Missouri, and southern territories, we held in the second supplemental report (1939), 232 I. C. C. 81, that "Difficulties and inconsistencies in applying this finding such as respondents adduce will inhere in any interterritorial class-rate structure so long as the classification ratings are not uniform in the different territories."

Our efforts to bring about unification were instrumental in obtaining the unification of the rules and description of articles. In later years the necessary prescription of single classifications to govern the interterritorial through class rates, required in the comprehensive proceedings cited above, has been a compelling force in bringing about the present comparatively high degree of uniformity of ratings in the three classifications, or at least merging in two of the three.

ANALYSIS OF CONSOLIDATED CLASSIFICATION

The consolidated freight classification comprises official, Illinois, southern, and western classifications, which govern tariffs making reference to them. It contains descriptions of all articles of commerce, including kind of shipping container or nature of packages contemplated by the ratings, and rules and packing descriptions, that are uniform in all the classifications. Opposite the descriptions of articles are shown in three parallel columns the less-than-carload ratings, carload minimum weights or indication of any quantity, and carload ratings, respectively. Where specified as "AQ", or any quantity, the rating is duplicated in the two rating columns. Where the rating is uniform in all classifications, a single figure appears in the respective rating column; otherwise three ratings are set forth for official, including Illinois, southern, and western classifications, respectively, unless the Illinois classification rating differs from that in offi-

cial, in which instance four ratings are stated, of which the second is for Illinois classification and the third and fourth for southern and western.[8] Numbers in rating columns higher than 12 (except R26, meaning rule 26, and rates stated in cents per car-mile on railway cars) represent percentages of class 100,[9] published in the class-rate tariffs.

Ratings often vary on a given article for certain reasons, such as the manner of packing or whether the article is set up or knocked down. Many articles have more than one carload rating, depending upon different minimum weights. Numerous carload minima are subject to a rule (rule 34) requiring the computation of freight charges on a higher minimum when the car used exceeds the length specified for the minimum appearing opposite the article descriptive item. Practically all articles have both less-than-carload and carload ratings. In comparatively rare instances, one or all classifications will not provide ratings on articles, but will show that they are subject to the rates of individual carriers, or are not taken, or the rating is stated for one or two classifications only. As to one small category, railway cars moving on their own wheels, the classifications name rates in cents per car-mile instead of giving ratings.

Illinois classification ratings are the same as official on the bu... of the items. The remaining ratings are mostly the same as western, but sometimes the same as southern, and occasionally they are higher or lower than in either of the three major classifications. It is said that the rating on a given article published in Illinois classification is adopted from the classification applicable in the territory from which Illinois shippers encounter their principal competition. Discussion of Illinois classification in the same detail as regarding the other classifications seems unnecessary, inasmuch as the former now governs comparatively little interstate traffic, and whatever is said or done with respect to the others apparently will be pertinent to and dispose of this classification.

While each classification contains numerous ratings which are set forth in percentages of class 100, many being the same as those prescribed by us for so-called regular classes, the classifications do not specify any percentage relations for the regular numbered and lettered classes, but many tariffs do publish them. Such percentages were prescribed by us in the eastern revision for rates governed by official classification; in the southern revision for rates governed by southern classification, in the western trunk-line and southwestern revisions for rates governed by western classification, except in mountain-Pacific territory and on transcontinental traffic. As to mountain-Pacific ter-

[8] These single figures, or the figures for the respective classification where the ratings are different, will be sometimes termed "sets" in this report.

[9] Class 100 is the term generally used in this report for first class, as explained later.

ritory, although there are important exceptions, the percentages generally reflected in the class rates are those which appeared as the relations in the rates required in *Portland Chamber of Commerce* v. *Oregon R. & Nav. Co.* (1911), 21 I. C. C. 640. They were followed in subsequent reports involving rates in all parts of that territory, including *Utah Shippers Traffic Assn.* v. *Atchison, T. & S. F. Ry. Co.* (1931), 172 I. C. C. 306, 311, in which the class-rate scale was extended to 1,500 miles. No consistency exists in the relations between class rates applicable on transcontinental traffic, which are subject to western classification. Class rates governed by Illinois classification have percentage relations not prescribed by us.

Articles are classified in official, Illinois, southern, and western classifications, respectively, into 7, 12 (or 11 since classes 6 and C are same percentage of first class), 12, and 10 regular numbered or lettered classes. In addition, there are 7 classes, namely, 1¼, 1½, 1¾, 2, 2½, 3 and 4 times class 100 rates. The regular class designations and their percentage relations to class 100 reflected in the rates in tariffs applicable in the respective rate territories are stated in the following table:

Percent of class 100	Regular class designation				
				Western	
	Official	Illinois	Southern	Western trunk line and Southwestern territories	Mountain-Pacific territory
100	1	1	1	1	1
85	2	2	2	2	2
70	3	3	3	3	3
60					4
55	R26	R26	4	4	
50	4	4			5, A
45			5	A	
40		A	6		B
37½				5	
35	5	5	7		
32½		B		B	
30			8	C	C
27½	6	6, C			
25			9		D
22½		D	10	D	
20		E	11		E
17½			12	E	

[1] Formerly official classification provided rule 25 ratings, for which 70 percent of class 100 was prescribed in the eastern revision. It has been replaced by class 3 in the classification, although it may still appear in some tariffs.

Besides the classes described above, there are in official, southern, and western classifications, respectively, 16, 14, and 12 classes that are stated in percentages of class 100, of which 3, 5, and 3 classes are the same equivalents of class 100 rates as are certain regular classes in the particular classification. Only one of them, 110 percent, which provides a rating on one article descriptive item in less than

carloads, is above class 100 in each classification and those below range from 77½ to 20 percent.

The total of all classes, namely, those above class 100, regular (numbered and lettered), and percentage, in official, southern, and western classifications, are 27, 28, and 26, respectively, counting as one equivalent regular and percentage classes; and the full range of all classes in each classification is from 17½ to 400, except that in official the lowest is class 20.

In order to avoid possible confusion and misunderstanding, all classes, however stated in the classifications, will be denoted generally in this report by percentages of class 100, and class 100 may be taken as equivalent to class 1 or first class, as those terms are used in the current classification. Unless otherwise indicated, the official, southern, and western class-rate percentages hereinafter mentioned will be understood to mean those prescribed in the eastern, southern, and western revisions, respectively.

The following facts are found from study of an exhaustive analysis in the record of the consolidated classification as in effect on August 3, 1942.

The sets of ratings on article descriptive items and subitems on which all, or at least one, of the three major classifications provide ratings aggregated 20,915, of which 83 were any-quantity (counting duplicate ratings in less than carloads and carload columns in the classification as one), 10,451 less-than-carload ratings, and 10,682 carload ratings (including 273 tank-car ratings). Of the aggregate, 4,077 ratings were stated as percentages of class 100 rates. The number of different kinds of combinations of ratings found in these sets, consisting of regular class and class-and-percentage ratings, both uniform and nonuniform, and appearing in the three classifications, is 16 for any quantity, 80 for less than carloads, and 288 for carloads including tank-car ratings. In addition, there were 11 items of railway cars moving on their own wheels on which rates were named in cents per car-mile instead of ratings. Appendix 4 to this report sets forth the any-quantity and less-than-carload ratings as distributed among the classes in the respective classifications, and appendix 5 the carload ratings (including the tank-car ratings).

As would be expected, ratings in excess of class 100 are used almost entirely for any quantity and less than carloads. They account for approximately 16 percent of the former, somewhat less than 10 percent of the latter, and only about 0.23 percent of the carload ratings.

Omitting the article items and subitems on which any one of the three major classifications fails to provide a rating, the following table shows the degree of uniformity existing in ratings, and the

extent to which the ratings in two classifications are alike, or unlike in any two:

	Any quantity		Less than carloads		Carloads		Grand totals	
	Number of ratings	Percent	Number of ratings	Percent	Number of ratings	Percent	Number of ratings	Percent
Totals	80	100.00	10,134	100.00	10,664	100.00	20,878	100.00
Uniform in the 3 classifications	64	80.00	8,622	85.08	3,968	36.27	12,584	60.13
Alike in 2:								
Official and southern	67	83.75	9,343	92.18	5,114	47.96	14,524	69.57
Official and western	76	95.00	8,876	87.59	4,522	42.40	13,474	64.53
Southern and western	64	80.00	8,822	87.05	6,320	59.27	15,206	72.83
Unlike in any 2 classifications	1	1.25	337	3.32	2,444	22.92	2,782	13.33

Uniformity is greatest in the less-than-carload ratings, and least in the carload ratings. The percentages of unlikeness are extremely small, except as to carloads. A slight retrogression occurred in the combined any-quantity and less-than-carload ratings since 1937, at which time our annual report stated the uniformity as 86 percent, whereas it is now 85 percent; and a progression of unlikeness from 2.2 percent to 3.3 percent. That report does not contain corresponding figures for carload ratings, which are now only 36 percent uniform and 23 percent unlike in any two classifications.

On article descriptive items provided in each classification with ratings, any-quantity ratings in the 3 classifications range from classes 50 to 300, less-than-carloads from classes 30 to 400, and carloads from classes 17½ to 200. Although these ranges embrace quite a number of classes, including regular and percentage, the bulk of the article items are concentrated in comparatively few. The less-than-carload ratings in official and southern are distributed among 16 classes each, but 89.65 and 85.96 percent, respectively, of the items are in 5 classes (100, 85, 70, 55, and 50); while in western they are found in 12 classes, but 90.13 percent are in 4 classes (100, 85, 70, and 55). Carload ratings are more widely scattered, in official among 21 classes, but 72.32 percent of the items are in 5 classes (70, 55, 40, and 35), and 98.23 percent are in 10 classes (additions, 100, 85, 45, 37½, and 27½); in southern, among 23 classes, but 74.34 percent of the items are in 4 classes (70, 55, 45, and 40), and 91.45 percent are in 8 classes (additions, 100, 85, 35, and 30); and in western among 21 classes, but 81.52 percent of the items are in 4 classes (70, 55, 45, and 37½), and 95.45 percent are in 8 classes (additions, 100, 85, 32½, and 30).

Despite the relatively high degree of uniformity in any-quantity and less-than-carload ratings, substantial disparities exist on indi-

vidual article items as indicated in appendix 4 to this report. Thus, on certain items, on which the ratings are stated for any quantity, southern classification is never higher than either official or western, but has one rating of class 55 for which the two others name class 100, whereas official and western are alike in all but one such rating. As to less-than-carload, on items rated class 50 in official the ratings in southern range from classes 30 to 70, and in western from classes 55 to 85; on items rated class 70 in southern the ratings range from classes 50 to 100 in official, and from classes 55 to 85 in western; and on items rated class 55 in western the ratings range from classes 40 to 100 in official, and from classes 30 to 100 in southern.

Still greater variations, relatively, are presented in the carload ratings, set out in appendix 5, of which the following are examples; on items rated class 35 in official, the ratings in southern and western both range from classes 17½ to 55; on items rated class 40 in southern, the ratings in official range from classes 27½ to 70, and in western, from classes 17½ to 40; and on items rated class 45 in western, the ratings in official range from classes 27½ to 85, and in southern, from classes 30 to 55.

All proponents of a change from one classification to another advocated adoption of the official classification as the basis. That classification, from the shippers' standpoint, is regarded as more favorable than the two others on traffic that is moving under class rates. Mathematically, there is little difference on the whole, in that the weighted general averages of the percentage relations to class 100 of all ratings in the respective classifications fall within less than one percentage point, being 67.91, 67.82, and 68.70 percent for official, southern, and western. Broken down by character of ratings, official, southern, and western average percentages of class 100 are, respectively: Any quantity, 112.81, 108.69, and 112.81; less-than-carloads, 87.02, 85.95, and 87.21; and carloads, 49.40, 50.26, and 50.75.

The following table shows total ratings, grouped according to percentages in official classification, and the extent to which the corresponding ratings in southern and western classifications are like, or higher or lower than, those in official, as in effect August 3, 1942. As stated, distribution according to percentages of class 100 in southern and western classifications is shown in appendixes 4 and 5 to this report.

Official classification			Corresponding ratings in—					
	Ratings		Southern			Western		
Percentage of class 100	Kind [1]	Number	Alike	Higher	Lower	Alike	Higher	Lower
400	l. c. l.	2	2	0	0	2	0	0
300	aq	6	6	0	0	6	0	0
	l. c. l.	16	16	0	0	16	0	0
250	aq	1	1	0	0	1	0	0
	l. c. l.	21	21	0	0	21	0	0
	aq	4	4	0	0	4	0	0
200	l. c. l.	356	356	0	0	356	0	0
	c. l.	5	3	0	2	3	0	2
175	l. c. l.	13	13	0	0	13	0	0
	aq	2	2	0	0	2	0	0
150	l. c. l.	482	482	0	0	482	0	0
	c. l.	3	1	0	2	1	0	2
125	l. c. l.	99	99	0	0	99	0	0
	c. l.	19	18	0	1	18	0	1
110	l. c. l.	1	1	0	0	1	0	0
	aq	34	31	0	3	33	0	1
100	l. c. l.	2,092	2,075	0	17	2,076	0	16
	c. l.	213	199	0	14	202	0	11
	aq	15	13	0	2	15	0	0
85	l. c. l.	2,672	2,600	0	72	2,625	0	47
	c. l.	766	575	1	190	587	1	178
75	c. l.	2	2	0	0	2	0	0
	aq	15	7	0	8	15	0	0
70	l. c. l.	2,719	2,390	0	329	2,571	0	145
	c. l.	1,433	1,330	1	102	1,381	1	51
65	c. l.	6	0	0	6	0	5	1
60	l. c. l.	14	0	2	12	0	4	10
	c. l.	3	1	0	2	1	0	2
57	l. c. l.	1	0	0	1	0	0	1
55	l. c. l.	616	585	3	48	613	3	0
	c. l.	1,270	1,183	19	68	1,198	19	53
	aq	3	3	0	0	0	3	0
50	l. c. l.	995	682	13	300	0	995	0
	c. l.	1,185	93	812	280	57	999	129
45	c. l.	335	315	8	12	323	8	4
40	l. c. l.	33	33	0	0	0	33	0
	c. l.	1,105	809	292	4	32	990	83
37½	c. l.	766	90	664	12	644	118	4
35	c. l.	2,709	380	1,928	401	3	2,460	46
32½	c. l.	7	5	0	2	6	0	1
30	c. l.	89	72	13	4	50	33	6
27½	c. l.	677	16	418	243	0	463	214
25	c. l.	34	8	1	25	0	9	25
22½	c. l.	20	14	0	6	14	0	6
20	c. l.	1	1	0	0	0	1	0
Totals	a. q	80	67	0	13	76	3	1
	l. c. l.	[2] 10,129	9,335	18	776	8,873	1,035	219
	c. l.	[2] 10,648	5,115	4,157	1,376	4,522	5,107	1,019
Percentages	a. q	100.00	83.75	0.00	16.25	95.00	3.75	1.25
	l. c. l.	100.00	92.16	0.18	7.66	87.62	10.22	2.16
	c. l.	100.00	48.04	39.04	12.92	42.47	47.96	9.57

[1] Abbreviations: aq, any quantity; l. c. l., less than carload; c. l., carload.
[2] Here the total number of less-than-carload and carload ratings are 5 and 16, respectively, less than stated in the preceding table. Both tables were compiled from the same exhibit, but from different parts thereof.

Compared with official classification, no any-quantity rating in southern is higher, and in western only 3 are in higher; and those lower are 13 and 1, respectively. A similar situation exists as to less-than-carloads, where out of 10,129 ratings only 18 in southern, but 1,035 in western, are higher than in official, whereas 776 and 219, respectively, are lower. As to carloads, it is different in this regard, in that out of 10,648 ratings, 4,157 in southern and 5,107 in western are higher than in official, and 1,376 and 1,019, respectively, are lower.

Many incongruities apear among the ratings. Thus, out of more

than 10,000 sets of less-than-carload ratings, 1 item is rated in the 3 classifications class 110, which is not a regular class; 13 items are rated in official class 60, not a regular class, but are assigned to either regular classes 70 or 55 in southern and western; and a single item is rated class 57 in official, which is not a regular class and only 2 percentage points above class 55 wherein it is placed in southern and western. As to carloads, many item ratings in each classification are not regular. For example, official has 2 in class 75, 6 in class 65, 3 in class 60, 7 in class 32½, and 1 in class 20; southern has 24 in class 77½, 4 in class 75, 11 in class 65, and 6 in class 60; and western has 24 in class 77½, 2 in class 75, 11 in class 65, 1 in class 60, 1 in class 42½, and 8 in class 35. Few of the more than 10,000 carload items are assigned in southern classification to regular classes 25, 20, and 17½,[10] or 48, 37, and 86 ratings, respectively.

There is no consistency in the assignment of ratings on the same article as between less-than-carloads and carloads. A few examples of the inconsistencies are: On an article descriptive item one classification will provide the same rating for less-than-carloads as for carloads, but in the others the rating for the former is higher than the latter; the same uniform rating in the three classifications will be shown for both less-than-carloads and carloads, and a carload minimum weight will be specified which, in effect, results in any quantity ratings, but the ratings are not listed as any quantity; and a uniform carload rating and minimum weight will be stated for a number of items, indicating to some extent similar transportation characteristics of the articles embraced, but the variations in less-than-carload ratings are, for example, from class 55 to class 100, and from class 70 to class 250. Although the less-than-carload and carload ratings are the same on many items, on the great majority of them the former are higher than the latter, and often extremely wide spreads occur, counting regular ratings. For example, in southern and western classifications the spreads are from class 17½ to class 100, or of 11 and 9 classes, respectively, meaning that the less-than-carload ratings are 471 percent higher than carload ratings. If grouped according to number of classes represented by the spreads, probably the largest group would be that of spreads of 2 regular classes.

RATE EFFECT OF CLASSIFICATION DIFFERENCES

In our report in *Eastern Class-Rate Investigation*, *supra*, at pages 372–373, we undertook as a part of the comprehensive revision of class rates there made, to "introduce a proper degree of flexibility into the

[10] In the southern revision we prescribed these for regular classes 9, 11, and 12, respectively.

structure" of the class-rate tariffs. After discussing efforts to obtain this result in other proceedings, and the utility of a greater number of percentage columns related to first-class rates (and thereby automatically related to all the classification ratings) we made a finding as to the percentage relations of the columns of rates to the first-class rates. As amended in our supplemental report in that proceeding, 171 I. C. C. 481, 499, the finding reads as follows:

> 1. We find that for the future the class rate tariffs in official territory should contain columns of rates bearing the following percentage relations to the first class rates prescribed in this proceeding: 100, 92.5, 85, 77.5, 70, 65, 60, 55, 50, 45, 40, 37.5, 35, 32.5, 30, 27.5, 25, 22.5, 20, 17.5, 16, 14.5, 13.

Examination of the comparative table which appears above shows that only to a slight extent have these percentages (other than those used for the so-called regular classes) been carried into the several classifications before use for the purpose of providing classification ratings additional to those of the regular classes. Flexibility, when considered necessary, has all but invariably been accomplished by making an exception to the classification and thus removing the commodity from the classification, rather than by giving it a rating stated in percentage of first class. This is so, although the feasibility of making use of such intermediate percentages is evident from the fact that they have been so used, but not enough to avoid the whittling away of the classification by the process of making exceptions thereto. The table shows that some of the percentage relations have not been used in the official classification at all; if those percentages are used for the statement of rates, it is by the device of removing the commodity *pro tanto* from the classification and assigning it a rate in a special tariff.

Although the proceeding in No. 28310 brings in issue only the classifications, discussion of the differences as between them in ratings would be purely academic without indicating in some degree the effect they have upon the rates in the various territories. A rating must be complemented by a class rate, and vice versa, in order to give substance to either. Therefore, for the purpose of conveying some idea of the effect that the classification differences have upon rates prescribed in territories embraced in docket No. 28300, appendixes 2 and 3 to this report have been compiled, in which the rates for a single distance are stated. The appendixes do not purport to show the average territorial rate levels, because the progressions with distance in the scales in official, southern, and western territories differ to some extent one from another, producing relations between the territories varying with distance; and rate levels in certain parts of the territories, such as in New England and the Florida peninsula, are higher than in the major portions of the territories.

Appendixes 2 and 3, respectively, cover less than carload and carload ratings and rates, and each contains tables numbered I, II, and III, which deal with official versus southern, official versus western, and southern versus western classification ratings and intraterritorial rates. The ratings are those in effect August 3, 1942, except that southern versus western ratings as effective March 17, 1942, are used because August 3 data therefor are lacking.

Inasmuch as a high degree of uniformity already exists in the ratings above class 100, the comparisons in appendixes 2 and 3 are with class 100 and below, confined to the classes representing a substantial number of ratings. Article descriptive items covered are those provide with less-than-carload or carload ratings in each of the three classifications.

The class rates appearing in these appendixes are taken from the distance scales prescribed in the eastern, southern, and western revisions, subjected to the 10-percent general increase of 1938. Rates for 200 miles, the approximate average haul of revenue freight by class I railroads per line of railroad are used, although the average haul per shipment is longer, especially if heavy moving short-haul traffic that moves on commodity or exception rates is excluded. As representative of western territory, the rates for western trunk-line zone I are shown. The corresponding rates for zones II and III are higher by averages of about 14 and 25 percent, respectively. The latter scale was prescribed also for southwestern territory.

As will be observed from appendixes 2 and 3, the article ratings of a particular class in a given classification are found for the most part in the same class, or fairly close thereto, in the other classifications, and the remainder are distributed or scattered widely among other classes. But even where the ratings are the same, the rate effect differs substantially because of the variances in territorial rate levels.

Thus, the 616 articles rated class 55 in less than carloads in official classification, which move at a rate of 44 cents for 200 miles in official territory, are rated from classes 40 to 85 in southern classification on which the rates for 200 miles are from 45 to 95 cents in southern territory; 565 of the articles are, however, in class 55 in southern classification with rate of 62 cents. The same articles are rated from classes 55 to 85 in western classification, on which the rates for 200 miles in western trunk-line zone I range from 53 to 82 cents; 613 of the articles are, however, in class 55, with a rate of 53 cents for 200 miles.

The most important carload class in official territory is class 35, comprising 2,709 article ratings, on which the rate for 200 miles is 28 cents. Those articles are rated from classes 17½ to 55 in southern classification, and the rates thereon vary from 20 to 62 cents in southern

territory, but 1,646 ratings are in class 40 with a 45-cent rate. In western classification, the carload ratings on such articles extend from classes 17½ to 55, on which rates in zone I range from 17 to 53 cents, with 2,115 of the ratings in class 37½, rate 36 cents.

Comparisons of mountain-Pacific with official and southern territories, of the same nature as those in appendixes 2 and 3, would have little significance because the territories are not contiguous. A better one is with the bordering western trunk-line zone III and southwestern territory, in both of which zone III scale applies, and which bears relations to the rates in zone I which are stated in appendixes 2 and 3. While one classification governs in these western territories and between them, as stated the relations of the rates to class 100 of the regular 10 classes in mountain-Pacific territory are not the same as in the others on classes below class 70.

Because the progression with distance of the maximum rates in the scale prescribed in several proceedings from and to points in virtually every part of mountain-Pacific territory differs materially from the progressions in scales prescribed in the eastern, southern, and western revisions, and the percentage relations between the regular classes also differ (but ratings stated in percentages in western classification are the same in all western rate territories), rate comparisons for a single distance might tend to mislead. Therefore, in order to present some comparison, rates are set forth in the following tables that were prescribed in the territories and zones named for distances of 50, 100, 200 (employed in appendixes 2 and 3), 400, and 800 miles, subjected to the 10-percent general increase of 1938. The first table shows the 10 classes in mountain-Pacific territory, their percentage relations to first class as prescribed, and rates for the specified distances.[11] The second table shows the rates in the other territories and zones on percentages corresponding to those prescribed for regular classes in mountain-Pacific territory:

Mountain-Pacific territory

Classes	1	2	3	4	5	A	B	C	D	E
Percentages	100	85	70	60	50	50	40	30	25	20
Rates:										
50 miles	50	42	35	30	25	25	20	15	12	10
100 miles	77	66	54	46	39	39	31	23	20	15
200 miles	111	94	78	67	56	56	44	33	28	22
400 miles	171	145	120	103	86	86	68	51	43	34
800 miles	281	238	197	169	141	141	112	84	70	56

[11] At present in mountain-Pacific territory many class rates are lower than prescribed; and class 5 is often a lower percentage of class 100 than is class A, for both of which rates reflecting 50 percent of first class were fixed.

Other territories and zones

Percentages	100	85	70	60	50	50	40	30	25	20
Western trunk-line zone III and southwestern territory										
50 miles	65	55	46	39	33	33	26	20	16	13
100 miles	90	77	63	54	45	45	36	27	23	18
200 miles	123	105	86	74	62	62	49	37	31	25
400 miles	172	146	120	103	86	86	69	52	43	34
800 miles	265	224	184	158	132	132	105	79	66	53
Western trunk-line zone										
50 miles	53	45	37	32	27	27	21	16	13	11
100 miles	73	62	51	44	37	37	29	22	18	15
200 miles	97	82	68	58	49	49	39	29	24	19
400 miles	136	116	95	82	68	68	54	41	34	27
800 miles	210	179	147	126	105	105	84	63	53	42
Official territory										
50 miles	47	40	33	28	24	24	19	14	12	9
100 miles	62	53	43	37	31	31	25	19	16	12
200 miles	80	68	56	48	40	40	32	24	20	16
400 miles	109	93	76	65	55	55	44	33	27	22
800 miles	160	136	112	96	80	80	64	48	40	32
Southern territory										
50 miles	62	53	43	37	31	31	25	19	15	12
100 miles	84	71	59	50	42	42	34	25	21	17
200 miles	112	95	78	67	56	56	45	34	28	22
400 miles	156	133	109	94	78	78	62	47	39	31
800 miles	222	189	155	133	111	111	89	67	56	44

Comparisons of similar character for interterritorial rates governed by the different classifications are not practicable because such rates vary greatly in amounts for like distances depending upon the proportions thereof in the respective territories through which the rate-making routes are computed. Interterritorial rates usually represent a blend of, or lamination derived from, the rate levels within the territories or zones concerned.

EXCEPTIONS TO CLASSIFICATIONS

In recent years the importance of the classifications as factors in the determination of freight charges by rail has lessened. This situation has been brought about by the establishment of innumerable exceptions which take precedence over the classifications, and by the use of commodity rates. Normally the effect of the establishment of a commodity rate is to exclude the application of the classification and class rates which otherwise would apply and govern the computation of the charge. The level of ratings in exceptions and of commodity rates, as distinguished from the level of ratings in the classifications, which is made by the respective classification committees, is determined by individual carriers or groups of carriers, and is fixed upon consideration of principles usually different from those accorded weight in the determination of classification ratings. Some of the reasons for the establishment of exceptions to the classifications are the following: To meet motortruck and other competition; con-

venience and expedition in publication; to accomplish a more restricted application of particular rates; to remove or reduce the amount of differences between class rates and between less-than-carload and carload rates; and to provide a quicker and less burdensome method of complying with section 4 of the act. Many exceptions to the classifications are stated as percentages of first class, and they usually result in rates lower than would apply by the use of classification ratings.

The complete extent to which exceptions to the classifications have been established is not shown in the record. While in all territories, except the South, the greater part of less-than-carload tonnage moves subject to ratings in the classifications, it is generally conceded that as to carload traffic the exceptions have superseded the classifications in large degree. In comparison with other rate territories, the degree in mountain-Pacific territory is smaller. The volume of traffic in all territories which moves under rates subject to exception ratings greatly surpasses that subject to the classification ratings.

In southern territory, rates published as exceptions, or as "column" rates [12] both bearing definite relation to the first-class rates, apply to 644 articles; between southern and central territories, to 582 articles; between southern and Illinois territories, to 606 articles; between southern and trunk-line and New England territories, to 581 articles; between southern and southwestern territories, to 379 articles; and between southern and western trunk-line territories, to 222 articles when moving north-bound, and to 255 articles when moving south-bound. Many of the lower-grade, heavily loading commodities move in southern territory under commodity rates, which are not governed by classification ratings. During 1941, 38 percent of the total originated tonnage of class I railroads in the southern region was transported under such rates. It consisted of brick, cast-iron pipe, cement, lime, road aggregates, livestock, fertilizer, sulphuric acid, cotton, petroleum, iron and steel articles, scrap iron, lumber, and pulpwood.

On September 1, 1940, less-than-carload ratings on approximately 3,500 article descriptive items were established in exceptions to the southern classification that were lower than the classification ratings on such items, ostensibly to meet motortruck competition. On more than 200 of the items carload ratings of 1 regular class below that on less than carloads were published. The territorial application of the exceptions are coextensive with southern classification, or generally throughout southern territory, between southern and official terri-

[12] In recent years, certain rates in the tariffs of the railroads have been designated therein as "column" rates, as for example, column 20. They are specific percentages of 100. In the example shown, column 20 means 20 percent of the first class rate, which is 100 percent.

tories, and from western trunk-line territory, including southern Missouri, to southern territory. These exceptions were to be incorporated in the southern classification as soon as practicable, but this had not been done when the hearings closed.

It is estimated that in Texas 50 percent of less-than-carload traffic and less than 10 percent of carload traffic move on classification ratings and class rates. Shippers in that State and in the Southwest are said to have little use for the classification ratings, and this seems to be so particularly as to carload traffic. Exceptions to the western classification applicable in the Southwest are published in a tariff which contains 86 columns of rates, including the 10 regular classes, ranging from 110 to 8.5 percent of first class. Exceptions in the form of 26 different percentage columns apply to 279 descriptions of less-than-carload traffic, and 70 different percentage columns apply to 919 descriptions of carload traffic. The exceptions also contain less-than-carload ratings lower than those determined by the classification on large groups of articles designated as mixtures, such as drugs and chemicals, hardware, and groceries, each mixture subject to a single rate.

The tariffs provide 86 columns of rates lower than first class for application in western trunk-line territory. Between that territory and central territory, in instances where the rates are governed by official classification and exceptions thereto, they provide 122 columns of rates lower than first class, and where the rates are governed by western classification and exceptions thereto, they provide 110 such columns of rates; on traffic between western trunk-line and southern territories, there are 98 columns of rates lower than first class south-bound and 66 columns of such rates north-bound.

An examination of 4 typical rate tariffs shows that 102 percentage columns of rates apply in official territory, 130 in southern territory, 89 in western trunk-line territory, and 85 in southwestern territory. The great number of columns is necessitated by the numerous different ratings in classification exceptions and by commodity rates. In some instances they were published to provide for the lesser percentage of increase authorized in general increases on certain traffic, such as agricultural products, irrespective of whether moving under class or commodity rates. Appropriate columns in the tariffs described above are used also for the numbered and lettered regular classes, of which 7, 12, and 10 have been prescribed for application in official, southern, and western territories, respectively, and for the percentage ratings in the classifications.

The evidence does not show the extent to which exceptions apply in official territory, but there are general statements to the effect that they are numerous and have extensive application, although less

numerous than in other territories, and that they have been established principally to meet motortruck competition.

A study of the carload freight traffic of the railroads transported on 1 day was made and testified to by a member of our staff. The basis of the study was a tabulation of the waybills for September 23, 1942, showing the number of carloads of each commodity moved by rail on that day. The tabulation did not reveal the nature of the rate at which the commodity constituting a particular carload moved, and to supply this deficiency, the kind of rate, that is, whether class, exception or commodity, was supplied by our Bureau of Traffic according to the most probable rate charged. This study, while possessing many infirmities because of the lack of basic data, is the only evidence which purports to indicate the proportions of carload traffic moving on class, exception and commodity rates, respectively. It has not been successfully challenged as a reasonable approximation of the facts stated in detail.

The following table, compiled from the study, gives the distribution of carload traffic on September 23, 1942, for each of the major rate territories and interterritorially:

Territories (within, or from one to another)	Class rates	Exception rates	Commodity rates
	Percent	*Percent*	*Percent*
Official	5.8	17.6	76.7
Southern	1.8	6.0	92.2
Western trunk-line	0.6	0.2	99.2
Southwestern	2.4	1.4	96.2
Mountain-Pacific	1.7	(1)	98.3
Official to southern	12.6	36.3	51.1
Southern to official	0.9	4.9	94.2
Official to western trunk-line	12.3	35.4	52.3
Western trunk-line to official	3.1	1.0	95.1
Official to southwestern	22.8	52.0	25.8
Southwestern to official	1.5	3.4	95.9
Official to mountain-Pacific	11.3	(1)	88.7
Mountain-Pacific to official	(97		99.3
Southern to western trunk-line	1.5	13.6	85.0
Western trunk-line to southern	6.1	3.1	90.8
Southern to southwestern	6.1	22.1	71.8
Southwestern to southern	1.2	4.3	94.5
Southern to mountain-Pacific	4.1	4.9	91.0
Mountain-Pacific to southern	1.5	0	98.5
Western trunk-line to southwestern	13.9	6.2	80.8
Southwestern to western trunk-line	2.0	3.0	95.0
Western trunk-line to mountain-Pacific	2.6	0	97.4
Mountain-Pacific to western trunk-line	0.7	0	99.3
Southwestern to mountain-Pacific	3.9	0	96.1
Mountain-Pacific to southwestern	2.1	0	97.9
All territories to official	4.8	14.4	80.8
Official to all territories	6.7	19.4	73.9
All territories to southern	4.1	11.9	84.0
Southern to all territories	2.1	6.2	91.7
All territories to western trunk-line	2.3	5.4	92.3
Western trunk-line to all territories	1.7	0.6	97.7
All territories to southwestern	5.6	10.6	83.8
Southwestern to all territories	2.0	3.9	94.1
All territories to mountain-Pacific	3.3	0.2	96.5
Mountain-Pacific to all territories	1.5	(1)	98.5
All territories to all territories	4.1	10.	85.2

[1] Less than 0.05 percent.

SUGGESTIONS BY MEMBER OF OUR STAFF

Included in the evidence in this proceeding is a study made by a member of our staff, the assistant to the director of the Bureau of Traffic, entitled "Some Suggestions for Improvements in Railroad Class Rates." It contains principally suggestions for revision of the boundaries of the major freight-rate territories, and for reductions in the levels of the intraterritorial and interterritorial rates. The witness expressed the opinion that revision of the classification should not be attempted until revision of the class rates has been completed. As he proposes that the levels of the class rates should be reduced, the resulting loss of revenue must, in his opinion, be recouped by increases in the classification ratings. He suggests that the initiative of readjustments of the classifications be left to the railroads, and that in the selection of appropriate ratings the existing machinery for consulting interested shippers and the classification and rate committees be used. In order to permit the work to go forward in an orderly manner, the transfer from the old to the new scales of rates should be effected gradually by groups of commodities, and complete cancelation of the present class-rate scales should be deferred until the process has been finished.

It is his view that in reality the exceptions to the classification in all territories constitute the classifications, and that the truly exceptional traffic is that which moves at ratings in the classifications; hence in the revision he would substitute the exceptions for the classification ratings, subject to whatever adjustment might be necessary to preserve revenue.

Referring to the efforts to unify the several classifications, the witness stated that, considering classification in its narrow sense, much progress in that direction has been made, but the unification in fact has been largely factitious and the chief results has been to multiply classification exceptions in the South and West. He expresses the view that a closer approach to real uniformity will result if ratings are readjusted to move the traffic and the readjusted ratings are readjusted to move the traffic and the readjusted ratings published in the classifications rather than in the exceptions.

In his opinion a preliminary reform, which could and should be effected now, is to require all ratings in all classifications to be uniformly stated as that percentage of first class which they actually represent, and to eliminate the many ratings that are designated by a "confusing array of numbers, letters and other meaningless symbols."

RESPONDENTS' POSITION

The position of respondents is that complete classification uniformity is impracticable; that the existing classifications perform

useful and necessary functions, and there has been no such departure from or disregard of the principles of freight classification generally recognized or observed in the past as to make the existing classifications obsolete, or to warrant a new revised classification. They point out that the descriptions of articles, packing requirements and rules are now uniform, that substantial uniformity exists as to the ratings class 70 and higher, and that the principal remaining differences are with respect to carload ratings. These differences are regarded as fundamental, and respondents oppose changing the ratings solely to achieve uniformity. They contend that commercial conditions would be disturbed by precipitate changes, their revenues would be seriously affected, and attainment of uniformity would cause demands for an even greater number of exceptions to the classification and of commodity rates than now exists. In their opinion, a uniform classification is not in the best interests of the carriers or of the shipping public.

Even if complete uniformity were practicable and desirable, respondents contend it could not be prescribed in this proceeding because of the lack of evidence as to the lawfulness of any particular rating. In this connection they direct attention to the fact that there is no attack upon, and no evidence was introduced that would enable us to determine the lawfulness of, any given rating, but that the discussion in the record centered on the question whether it is desirable to have a uniform classification in all territories. They insist that the issue is whether the present classification ratings are unlawful in any respect, and not the desirability of a uniform classification. In their brief, respondents in official territory argue that the only question before us is: "Does this lack of uniformity mean that the ratings which are not uniform are, *per se*, unlawful, and if so, which of the ratings are unlawful, the high or the low, or both."

Evidence was introduced on behalf of respondents by members of their classification committees. Responding to our request, the principles according to which articles at present are assigned to the respective classes in the classifications were stated. These are: Weight per cubic foot of the article as packed, liability to damage, liability to damage to other goods with which loaded, the value per pound in comparison with analogous articles of light weight and value, comparison with competitive articles, possible movement in carloads, character of the article and of the packing to determine extent to which the capacity of cars can be used, commercial conditions and units of sales, trade conditions, and value of the service.

All these elements are considered, by the several classification committees in the rating of an article, but the weight accorded particular elements has changed in recent years. Formerly, when the railroads

had practically a monopoly of transportation, the principle given the greatest consideration was value of service, described as the ability to bear a particular rating with profit to the shipper or manufacturer and the railroads. Less weight was accorded the cost of service element. Development of competitive transportation agencies with flexible service, and a disregard of the element of value by the competitive agencies in the determination of their charges, have reacted upon the policies of the classification committees with the result that generally weight density is now the dominant consideration in determining classification ratings. This does not mean that value and other principles of classification are completely eliminated from consideration; but it does mean that the value of an article does not control the rating to the extent it formerly did. An illustration of this change is the action of respondents in southern territory in reducing about 3,500 less-than-carload ratings on September 1, 1940, by the publication of exceptions to the classification in that territory. In the examination of the ratings included in the revision it had been noted that value to the exclusion of everything else originally had determined the higher rating in those instances where there were different ratings on the same article in different types of packages. The policy adopted in that revision was to assign the lower rating to the article packed in all kinds of acceptable containers, thus giving less weight to value.

During the past 20 years the western classification committee has endeavored to meet our desire for uniformity. It is claimed that while greater uniformity now exists than ever before, the result has been serious loss of revenue to the railroads, and that further uniformity can be accomplished only by additional losses which must be made up by increases on commodities produced in the West. Acting under instructions from the executive committees representing the railroads in official, southern, and western territories, in December 1936 the classification committees brought about substantial uniformity of ratings in class 70 and higher. This action caused more than 700 reductions in the West. But in September 1940 the publication by exceptions to southern classification of the 3,500 less-than-carload ratings on moving traffic in the South had the effect of destroying in large measure the high degree of actual uniformity in less-than-carload ratings that previously had been attained, even though apparent uniformity of the classifications in the same degree continued. It was declared that shippers want uniformity only when the revision is downward and oppose it when accomplished by increases.

Classes 55, 45, and 37½, regular classes 4, A, and 5, respectively, are described as important classes in western classification. Class 55 contains numerous less-than-carload and carload ratings, but the two others comprise carload ratings only. A witness gave the number of

article descriptive items in these classes that are rated the same in official classification, the numbers thereof that are higher and lower, and the distribution of the items among ratings in official classification. Similar data are discussed in the chapter herein entitled "Analysis of Consolidated Classification," and the distribution is shown in appendixes 4 and 5 to this report. Class 45 is important largely because under it moves machinery of all kinds, as for example contractors' outfits and electrical machinery. This traffic, in official territory, moves mostly under class 40 or lower. Efforts to increase the ratings in official territory have been unsuccessful because of strong pressure exerted by manufacturers.

The comparisons indicated were made in order to illustrate the effect upon the carriers' revenues or upon the charges paid by the shipper which would result from a uniform classification. The chairman of the Western Classification Committee testified that, if there is to be uniformity, the ratings in western classification must be revised upward "unless you give the railroads away."

Requests for changes in classification are placed on the public dockets of the classification committees, and all interested persons are heard before a change is made. The rail carriers denied that changes suggested by the classification committee of one territory can not be made unless the committees of other territories agree to them. Sometimes a change is docketed that would seriously affect western territory, perhaps not on the particular article, but on competing articles. In such circumstances the western committee states its objections and suggests to the other committees that the change be published as an exception to the classification. Continuance of this procedure is advocated.

In 1907, at our insistence, a committee of 15 railroad representatives, with an equal number from official, southern, and western territories, was appointed to explore the matter of a uniform classification and to make recommendation. In April 1908, the committee reported to the executives of the railroads that it was feasible and desirable to make uniform rules, uniform descriptions, uniform packing regulations, and uniform minimum weights, but that uniformity of ratings was impossible. The committee met in cities throughout the country with national associations of shippers, received their recommendations and formulated uniform descriptions, rules, packing regulations, and minimum carload weights. Toward the end of Federal control the railroads, which began during World War I, the chairmen of the three major classification committees were called to Washington and were instructed to prepare a more simplified and consolidated classification. In that work, an effort was made to iron out some of the low and high spots, and after hearings, the proposed revision, with some modifica-

tions, was recommended by the Commission to the Director General of Railroads. *Consolidated Classification Case, supra.*

As an appendix to the report in that proceeding, a tentative classification was prepared by our staff which suggested it as a possible basis for bringing about uniformity in the classifications in the major territories. The proposal as such never became effective. The chairman of the western classification committee analyzed the ratings for article descriptive items whose initial letters were A to F, inclusive, in that proposal and found that the suggested changes in less-than-carload and carload ratings would have resulted in the following: Increases, 661 in official, 614 in southern and 496 in western; reductions, 700 in official, 623 in southern and 921 in western; total increases 1,771, total reductions 2,244. There are 329 additional pages in the tentative classification, and the witness estimated that a complete check would disclose that more than 10,000 changes in ratings were suggested. The analysis was made for the purpose of illustrating the serious effects upon shippers and carriers whenever a uniform classification is established.

In reply to a proposal that "the exceptions [to the classification] indicate a classification level which is appropriate to the present position of the rail carriers in the competitive field," the witness stated that the bulk of exceptions were made to meet motor competition, without consideration of the usual elements of classification, were inconsistent with one another, and could not serve as standards for a permanent and consistent classification, because every factor entering into the construction of a classification has been ignored in making the exceptions. Another serious question to be considered is the reduction in the differences between less-than-carload and carload ratings, if there should be reductions in the former. Such a situation would create demands for restoration of the former differences between less-than-carload and carload ratings.

If the application of official classification were extended to the Missouri River, the many exceptions to western classification would no longer apply in that portion of western territory, and, although there would be reductions in the ratings on numerous items in the classification, there also would be a sufficient number of increases to give the western shippers concern. Exceptions which would no longer apply are: Burlap, gunny, and jute bags, class 70 in official and class 55 in western territory; old wooden barrels, class 30, minimum 20,000 pounds, in western territory, and in official by exceptions, class 40, minimum 18,000 pounds, and class 45, minimum 14,000 pounds. All-freight rates in the West are classes 75 and 60, minimum 12,000 and 25,000 pounds, respectively. No corresponding exceptions were found in official territory, but it is understood that an all-freight rate of class

70, minimum 30,000 pounds, applies between certain points in that territory.

In determining ratings, the southern classification committee has been guided by principles stated from time to time in our decisions. Prior to the adoption of Consolidated Freight Classification No. 1, which combined in one book the official, southern and western classifications, effective December 30, 1919, the southern committee conducted its classification work entirely independent of the official and western classification committees. No formal record of data developed at periodic meetings with shippers was made. During that time the southern committee kept in touch with the ratings listed on the public dockets of the other committees, but those ratings were not controlling in the determination of ratings by the southern committee. For the reasons stated, the earlier records of the southern committee are lacking in the details of the transportation characteristics of articles classified, except in a few instances.

After December 30, 1919, the system previously observed by the southern committee was radically changed. Public dockets were made up and public hearings were held jointly by the southern, official, and western committees, and applications on approved forms for changes in ratings were demanded. Shippers were required to furnish information regarding the transportation characteristics of the articles. With the new procedure, which included a stenographic record of proceedings before the joint committee, data were obtained on which to base conclusions as to the propriety of changes requested.

The principal factor in determining southern classification ratings after 1919 and until recent years, except on unusually light and bulky articles, was value of service, described as "another term for the value of the commodity." The principles underlying the assignment of classification ratings have remained the same, but there has been a change in recent years in the influence of the controlling factors. The policies of the classification committees have been affected by competition between agencies of transportation, so that shipping weight density is now the dominant consideration in determining southern classification ratings. Value is of diminishing importance, and in certain instances as between like articles has disappeared altogether as a factor. The same is true also in the abandonment, to an extent, of differentiation and graduation of the ratings according to the methods or forms of packing.

The classification committees have no proposal or plan in contemplation for completely unifying the ratings in the classifications. There is, however, a definite trend in the direction of greater uniformity as indicated by the action in 1936, by which the ratings on virtually all articles in official, southern, and western classifications

in class 70 or higher were made uniform. As additions and new items are given ratings an effort is made, particularly in the merchandise category, to establish uniform ratings. Section 4 of the act has had an important part in the revision of southern classification in that many hundreds of ratings have been reduced so as not to exceed, by percentage of first class, those in western classification. The policy generally of the southern committee is to make ratings no higher by percentage of first class than those on the same articles in official classification. In carrying out the policy many southern ratings would become lower than in western classification, requiring reductions in the latter in order to achieve uniformity.

The following illustration of the number of changes which would have to be made to bring about uniformity of ratings on articles in class 55 in southern classification was given, 297 less-than-carload and 843 carload ratings in official, and 897 less-than-carload and 157 carload ratings in western classification.

The contentions of respondents as summarized in their briefs are as follows:

1. Great headway has been made towards unifying the three major classifications.

2. Classification items are established largely with the aid and advice of shippers, and after public hearings held by the consolidated classification committee; and many have been prescribed by us.

3. The classification being not a unit but a multiplicity of individual items, we are not warranted even in the interest of uniformity in requiring changes except upon proper representations and information from those directly affected by such changes, and such representations and information were not submitted, despite our invitation to the public to appear.

4. Because of the manifest indifference of the shipping public, we have received no adequate evidence upon which we can conclude that any of the thousands of classification items are unlawful, especially in view of the facts that governed their origin.

5. Classification exceptions arose under circumstances which do not warrant their adoption as standards for classifying freight, or a requirement that they be established permanently as classification ratings.

6. We are not aided in reaching conclusions by the mere expression of an individual's preferences or desires without the support of competent and relevant evidence.

7. There has been no such departure from or disregard of the principles of freight classification, generally recognized and observed in the past, as either to make the classification obsolete or to warrant us in prescribing any new or revised classification.

8. For many years there has been no general desire or sentiment on the part of those who use the classifications for nation-wide uniformity in classification ratings.

Trends in classification changes.—To ascertain, if possible, what had influenced the assignment of articles of freight to particular classes, or the trends reflected in such assignments, we requested respondents to furnish specified information pertaining to changes in ratings and newly established ratings published in the past. The information sought and supplied covers the 800 of those actions as to each of the 3 major classifications that occurred immediately prior to January 1, 1931, and June 1, 1940, respectively, and also all after the latter date and until shortly before the hearing. It contains the name of the article rated or rerated; the former rating, if any, and the new rating; whether the rating was for any quantity, less-than-carloads, or carloads; and the weight per cubic foot and value per pound taken into account. Excluded from the request were indirect changes in ratings resulting from modification in packing or loading requirements, or reductions in ratings made without obtaining the prevailing value and weight density of the article, such as reductions made primarily to promote uniformity among the classifications or to remove departures from the provisions of section 4 of the act. The consequent periods are: First, from June 30, 1928, to December 31, 1930; second, from December 24, 1936, to May 31, 1940; and third, from June 1, 1940, to September 30, 1942. The third period embraces 804 changes or new items in official classification, 771 in southern, and 684 in western.

The following analysis is made from the information obtained:

Average weights per cubic foot and values per pound for classes which present sufficient items to obtain significant averages during the three periods for the three classifications, and for less-than-carload (or any quantity) and carload ratings, are compiled in appendix 6 to this report. The averages show the expected inverse relation between weight per cubic foot and value per pound, i. e., for a class containing items of low average weight per cubic foot the average value per pound is high, and vice versa. This relation is largely illusory, due to the wide range of weights and values about their averages within a class. There is no suggestive correlation between weight and value when the separate items are considered. Articles of high value may be accorded a comparatively high rating regardless of heavy or light weight, while light, bulky articles may be assigned a high rating despite low value per pound. In other words, while a high value combined with a low weight density usually yields a high rating, and a low value combined with high weight density a low rating, the in-between cases of high

value with high weight, and low value with low weight are subject to the exigencies of the particular situation.

For less-than-carload ratings in the three classifications the average weights per cubic foot increase, and the average values per pound decrease, as the percent of first class becomes smaller, for each of the three periods under consideration. This comports with the theories that light and bulky goods should be rated at a higher level than heavy articles, and that valuable goods are better able to carry a high rating than less costly articles.

As between the three periods, in all classifications there occurred a marked decrease in the average weight per cubic foot of articles assigned to any one class between the first and second periods. This is an indication that bulkiness has lost part of its importance as a reason for assignment of relatively high ratings. Articles which would have been rated in a given class in the first period are now rated, on the average, in lower classes. Most of the change in this respect occurred between these two periods, there being little difference in average weights per cubic foot for any given class between the second and third periods.

The principal change in average value per pound for any given class came between the second and third periods. For the third period the average value per pound is considerably higher than was the case previously, indicating that goods which once would have been given a high rating because of high value are now being rated for other reasons at lesser percents of first class.

Carload ratings in the three classifications exhibit generally the same characteristics as to average weight per cubic foot and average value per pound as the less-than-carload ratings. The tendency of the average weight per cubic foot for any one class to diminish has not been as marked as in the case of less-than-carload ratings. The greater part of such change as has taken place occurred between the first and second periods. Average weight densities in the lower-rated classes in official and southern classifications have not changed significantly as between the first and third periods.

Average values per pound for articles in the various carload classes have tended to drop slightly between the first and second periods. However, between the second and third periods there was a marked increase in the average value of the goods assigned to any one class, indicating that goods of a given value are now being assigned to lower-rated classes than previously.

Some of the apparent changes in average values per pound are undoubtedly due to changes in the general price level. However, this cause is not sufficient to account for the variation in the value figures.

Between 1930 and June 1940, the Bureau of Labor Statistics index of wholesale prices of all commodities, except farm products, decreased 7 percent. The average value per pound for each of the various classes either increased somewhat in this interval, or decreased less than the general decrease in the price level, except in the cases of articles assigned for carload ratings to class 35 in official classification and to class 70 in southern and western classifications, indicating a net increase in average value per pound in all classes, except these, between the first and third periods.

The wholesale price index increased about 14 percent between 1930 and September 1942, the last month included in the third period. The average value per pound for each of the classes increased much more than 14 percent, except in the case of class 35 carload ratings in official classification, again indicating a true increase in the value of goods assigned to any one class.

As between June 1940 and September 1942, the third period, except for class 40 carload ratings in official classification and class 30 carload ratings in southern classification, the percentage increases in average values per pound assigned to the various classes greatly exceed a 22-percent increase in the wholesale price index.

In general, it will be observed that bulky goods are now being assigned to classes at a lower percentage of first class than prior to 1931, and that the average weight per cubic foot of the articles placed in any class is now lower than at that time. Likewise, articles of high value are now given ratings lower than those in the first period, the average value per pound of the items rated in any particular class being higher than in that period. Although not directly measurable, competition in any form is reflected in the attitude toward weight and value, which are measurable.

If the items appearing in the information furnished by respondents are examined with respect to the average [12] of the ratings assigned for various ranges of weight per cubic foot and value per pound, the observations heretofore made still hold. For this study, appendix 7 to this report was compiled to show by weight and value groupings the average ratings, in percentages of first class, assigned to article descriptive items that were rated or newly rated during the three periods, respectively, separately for less than carloads and carloads, in each of the three classifications. Weights per cubic foot of 70 pounds or more and values per pound of 60 cents or more are omitted, since items falling in these groupings are not sufficiently numerous to provide representative averages for significant weight and value intervals.

[12] The geometric average is used, since percentages are being averaged.

In the second period the tendency was to assign items of given weight densities to lower-rated classes than in the first period, about 10 years before. This tendency has been reversed for the lightest, bulkiest articles in the third period for both less-than-carload and carload ratings. In the latter category the heavier articles have continued to be assigned to lower-rated classes than in the first period. It will be noted that in the first period there was little difference in the average ratings for goods weighing between 20 and 70 pounds. In the third period the spread between the ratings for the intervals within this range has increased.

Generally speaking, the average ratings assigned to items of various values per pound increase with increased value. There are some exceptions, particularly in the carload ratings in the second period. The spread between the average ratings for articles value at less than 10 cents and those valued between 50 and 60 cents per pound has decreased considerably in the third period from what it was in the first period. This reduction is largely accounted for by the relatively greater decrease in ratings between the first and third periods for the higher-valued articles. This tends to verify the statement that in determining a rating, value as such is given less consideration than weight at the present time.

The information herein discussed was requested in the hope that it would enable the translation of the classification elements of weight density and value, along with others, into a formula or rule for the determination of lawful classification ratings. The analysis thereof produced interesting and instructive results. It developed that articles varying greatly in value and weight density are placed in the same class. Even the average percentage relations to first class of all articles in the respective classes are sometimes higher for the greater densities and lower values than for the lesser densities and greater values. These facts demonstrate that practically the classification committees have acted on their opinion that the importance of value and density in the classification of articles is not and cannot be determined by any fixed rule, but is dependent in large measure upon the exercise of judgment. Evolvement of the desired formula is therefore impossible. Although these elements must be taken into account in assigning an article to the proper class, they cannot be controlling or displace the sound judgment of experts in this field, who must appraise and evaluate these and other well-recognized classification elements and principles. The foregoing represents a fair summarization of the position taken by the respondents, as stated in their testimony and arguments.

SHIPPER INTERESTS OPPOSING UNIFORMITY

Public bodies in certain States,[14] and associations of shippers located in official territory, including New England, oppose the prescription of a uniform classification throughout the country. Generally, they take the position that the evidence does not warrant such prescription, and that a uniform classification, although it may be desirable, is not practicable because of the effects upon the revenues of the carriers, upon relations between shippers, and because transportation conditions in the different territories are not the same. Separate briefs were filed by interests in trunk-line, central, and New England territories and by the State of Ohio.

The trunk-line interests assert that, regardless of the desirability of a uniform classification, there is no basis in the present record for prescribing one. It is their view that before we can properly proceed with any unification of the present classification ratings in whole or in part, and before there can be intelligent consultation between the interested parties, having as an objective unification of the classification ratings, the following information must be developed:

1. The extent that the ratings on the various articles are the same or different in the three major classifications.

2. The extent that exception and column ratings are accorded the various articles in the same or different territories and interterritorially; also the percentage relation of each exception to first class.

3. The extent that exception and column ratings in each territory and interterritorially differ from: (*a*) The regular ratings published in the governing major classification, and (*b*) corresponding exception and column ratings in other territories, and for interterritorial application.

4. The extent that exception and column ratings in each territory and interterritorially were established: (*a*) To meet actual needs and requirements of the respective articles by reason of their inherent nature and transportation characteristics, and (*b*) to meet motor-carrier competition or competition from other forms of transportation.

5. A list of commodities for which there is no need for a classification rating.

The relative weight or consideration that should be accorded to each of the foregoing items of information, claimed to be essential in order to determine the lawful rating on a particular article, is not elucidated.

These interests are concerned as to the effect upon freight charges to be paid by shippers, if unification should be accomplished by some kind of leveling or averaging process, because of the greater volume

[14] Connecticut, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Rhode Island, Vermont, and Wisconsin.

of traffic that moves on class rates in official territory than in other territories. If uniformity, for example, should be brought about by increasing fifth class (35 percent) in official territory to 40 percent, and reducing fifth class (45 percent) in southern territory to 40 percent, using 100 and 138 cents [18] as the first-class rates in official and southern territories, the fifth-class rate in official territory would be increased from 35 cents to 40 cents, and the fifth-class rate in southern territory reduced from 62 cents to 55 cents. Similarly, if sixth class (27.5 percent) in official territory is increased to 34 percent and sixth class (40 percent) in southern territory is reduced to 34 percent, the sixth-class rate in official territory would be increased from 28 cents to 34 cents, and the sixth-class rate in southern territory reduced from 55 cents to 47 cents.

Some simplification of the classifications is possible without actually changing relations or the substance of the ratings. This can be done if, in instances in which ratings in the 3 major classifications on a particular article differ in nomenclature but bear the same percentage relation to first class, the same term for the same percentage is adopted in all classifications. For example, rule 26 in official classification is 55 percent of first class, and fourth class in southern and western classifications is also 55 percent. In the 3 classifications there are also a number of ratings which are stated as 55 percent of first class. If the same term were used in the 3 classifications for all such ratings, there would be both apparent and actual uniformity of 565 less-than-carload and 1,708 carload ratings, where at present there are apparent but not actual differences. Such simplification would reduce by a substantial number the variations which appear to exist between the several classifications.

The central territory interests also oppose the making of an order requiring uniformity of classification ratings. They object to any required uniformity, upon the grounds, among others, that the several classification committees should continue to have freedom of action to classify articles in their own territories in the light of prevailing transportation and traffic conditions, commercial demands and necessities, and competition, with which they are familiar. There are two reforms that they do favor. One is for a uniform nomenclature for the classes in the different classifications, and the other is a uniform relation between the several classes.

In support of their proposals for a uniform nomenclature in the several classifications and uniform percentage relations between the classes, they emphasize the fact that the greatest degree of uniformity has been attained in those ratings where the class designation and the

[18] Intended to represent the average of the first-class rates for all distance blocks in the 1,500-mile basic scales prescribed in the eastern and southern revisions.

class percentage are uniform. When there is a deviation, either as to the name of the class or as to the class percentage, there is a marked decrease in the percentage of uniformity. In instances where there is neither a corresponding class by name or percentage, there is practically no uniformity. In those situations there is a tendency to distribute ratings over a much wider range of classes. They assert that these obstacles can be overcome in only one practical way, and that is by setting up a standard set of classes to be adopted by all the classification committees. As to the number of classes, they have no definite opinion, but suggest that this report include a tentative proposal for a specific number of classes for discussion and argument.

The New England interests urge that the evidence shows that the existing classifications are lawful, and refer to the absence of any complaints from shippers; that the mere fact of a difference in ratings does not prove that one or the other rating is unreasonable or otherwise unlawful; and that factors which determine the rating to be accorded a particular article bear with varying importance in different regions. Even if a uniform classification were desirable and could be properly ordered, they contend that there is no basis for the prescription of such classification because data with respect to the relative importance by territories of the various factors which enter into and affect the classification of freight are not of record. It is claimed that the absence of these data precludes us from ordering a revision of the classifications, and that the evidence clearly shows that uniformity of classification ratings is not warranted.

The State of Ohio requests that, if we should find that a uniform classification is necessary and desirable, respondents should be allowed sufficient time properly to prepare such classification, based upon principles heretofore prescribed or recognized by us in arriving at proper ratings, and that conferences between shippers and carriers be permitted prior to its submission as an exhibit in this proceeding; further, that before ordering the formal filing of a revised classification, hearings should be held to receive evidence thereon; and that we should require a traffic study, based upon any proposed revised ratings, in order to determine their effect on the revenues and movement of freight traffic.

Opposition to any general revision of southern classification or of the southern class-rate structures was expressed by witnesses representing Southern States Industrial Council, a voluntary, nonprofit organization composed of important manufacturing interests located in 13 southern States, certain shippers in Tennessee, and of 60 individual shippers in the South whose operations are small or only moderately large. Their evidence was directed principally to the effect upon southern industry of uniform class rates, and related only

incidentally to classification; but they declared that no evidence was introduced to aid us in formulating a new classification, and therefore it is neither possible nor practicable to proceed with its preparation. Representatives of Louisville, Ky., Board of Trade and Cincinnati Chamber of Commerce oppose revision of the existing class-rate structures, and refer to the fact that they were made after exhaustive and painstaking investigations.

PROPONENTS OF UNIFORM CLASSIFICATION, OR EXTENSION OF OFFICIAL CLASSIFICATION

The major classifications have been compared and analyzed, and the diversity of the ratings has been shown. Proponents either of a uniform classification or of the extension of official classification to other sections of the country introduced voluminous evidence, showing the effect of the lack of uniformity upon shippers in their territories, and the extent to which the classifications have been rendered useless by the establishment of exceptions and commodity rates. It is impracticable and unnecessary to state the substance of the evidence of each witness. Much of it has been discussed earlier herein, and all has been carefully considered. It is appropriate to set forth the positions of these proponents of classification changes, and to refer to such additional evidence as tends to support their respective positions.

The Southern Governors' Conference, appearing on behalf of the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee is of the view that the present class-rate structure, including the classifications, within the South, and between the South and other territories, no longer meets the needs of commerce and is unreasonable and unduly prejudicial. It advocates a uniform classification throughout the country, but until such a classification is worked out, it suggests the extension of official classification for application throughout the territory east of the Mississippi River. Similar positions were taken by the Southeastern Association of Railroad and Utilities Commissioners, the State of Florida separately, and the Southern Traffic League.

The regulatory bodies of the Southwestern States and of the western trunk-line States of North Dakota, South Dakota, and Nebraska, Tennessee Valley Authority, American Farm Bureau Federation, motor-carrier interests, and associations of shippers in southern, southwestern, and western trunk-line States advocate a uniform classification throughout the country. In its brief, the Tennessee Valley Authority suggests a plan of uniform classification with class 100 as an index, and intervals between classes, of 5 percentage points from 100

to 35 percent, 2½ percentage points between classes below 35 percent, and 25 percentage points between classes higher than class 100.

It has been shown that a large number of articles are rated in one classification differently from those in another, which generally results in different charges on the same article in the various territories. Even when an article is rated lower in one territory than in another, the shipper with the lower rating may be at a disadvantage as compared with the shipper with the higher rating, because of higher territorial rate levels and the less favorable percentage relations between the classes in the territories. In some instances, the disadvantage is overcome because the advantage in the ratings is sufficient to wipe out the differences in rate levels and in relations between the classes. But in many instances, the existence of ratings in one territory lower than in another does not result in lower charges in the former because the difference in ratings is not sufficient to neutralize the rate disadvantage caused by the variations between class-rate levels and relations between the classes. The rate effect of such differences is indicated in appendixes 2 and 3 to this report.

Kentucky State authorities do not question the desirability of a uniform classification throughout the country, but are chiefly interested in obtaining for the entire State of Kentucky a classification which does not differ from that applicable in official territory. At present the official-territory rate structure applies in the northeastern part of that State.

State authorities, shippers and manufacturers in Iowa, Minnesota, and Wisconsin seek the extension of official classification to govern traffic within these States and between them and official territory. The Minnesota commission also advocates the cancelation of all exception ratings and their transfer to the classification; and Green Bay, Wis., asks that, if Wisconsin's request is not granted in its entirety, official classification be extended at least to that community and nearby points.

Some interests ask that, if a uniform classification is not required, the classification applicable within the territory of destination be prescribed to govern interterritorial rates.

Evidence was introduced by some of the interests named under this subheading relating to economic, traffic, and transportation conditions in the territories or communities they represent, as compared with corresponding data for other territories or communities where different classifications and rate levels apply. The purpose of these data is to prove that such conditions are sufficiently alike to warrant a common level of class rates and the same classification. Most of the evi-

dence deals with the class-rate situation and is not directed specifically to the matter of classification. Such evidence will be discussed in part II of this report.

MOTOR CARRIERS' SUGGESTED FORMULA FOR RATINGS

Certain motor carrier interests, consisting of a national association of carriers by motor vehicle and a number of their territorial rate bureaus or conferences, urge the prescription of a nation-wide, stable freight classification to be applied uniformly by all freight carriers subject to the act. However, only all-rail and rail-and-water ratings are in issue. These interests further urge that such classification be based upon defined principles of value, density, utility, and risk. In this proceeding they are concerned chiefly with package freight in less than carloads and carloads, which is competitive between rail and motor carriers, leaving to the railroads the classification of the kind of freight that moves predominantly by railroad, particularly that handled in open-top equipment. This is apparent from the scale of ratings they advocate, the lowest of which is class 50 (denominated class 15 in their formula), whereas the lowest rating contained in the present railroad classifications is class 17½.

These interests suggest that before a revised classification is promulgated, a comprehensive traffic test be made to develop the following information, regarded by them as a prerequisite to the establishment of a just and reasonable revised classification and class-rate system:

1. Normal movement in cars, tons, and ton-miles of articles covered by the individual items of the revised classification.

2. Normal intraterritorial and interterritorial movement in cars, tons, and ton-miles under each classification item.

3. The volume in cars, tons, and ton-miles of traffic moving under the revised classification which would fall within each of the classes in such classification, segregated territorially.

4. The revenues and volume in cars, tons, and ton-miles of traffic moving under commodity or other special rates not subject to the classification, segregated territorially.

As the information described is not kept currently by respondents it can be developed only by a detailed waybill analysis, and the re-rating of a sufficient volume to present a typical picture. Because of war conditions, either the waybills of a prewar period must be selected, collected, and analyzed, an expensive undertaking, or the test must be deferred until after the war, when it can be made much more economically upon a current basis, and would be typical of conditions in the postwar period.

The view of these motor carrier interests is that after a uniform nation-wide classification has been established, changes therein should be permitted only upon an affirmative showing of a necessity therefor; that no exceptions should be allowed upon a territorial basis; and that the burden of proof as to need and propriety of a specific exception should be affirmatively placed upon the proponent.

Pending the establishment of such a classification, made according to the principles and upon the basis of a formula advanced by them, the motor carriers suggest the extension of official classification to include southern territory. They contend that, from the standpoint of an industrial region such as official territory now is and southern territory is rapidly becoming, the official classification is better designed than the southern, said to be the outgrowth of a classification for a territory that originally was predominantly agricultural.

In an endeavor to arrive at a formula which would provide a simple means for classifying all articles of commerce, a survey of traffic handled by motor carriers was made. It covered 24 class I motor carriers operating in various parts of the country with operating revenues in 1940 of over $50,000,000. Ten of them were in the East, 9 in the South, and 5 in the West. The results were analyzed and a formula was presented to be used in the classification of articles. The controlling principle is said to be a proper and nondiscriminatory evaluation of the chief transportation characteristics that affect the movement of traffic, namely (1) value of the service, (2) cubic weight density of the freight, and (3) the risk involved. The formula about to be described is suggested as something not immutable, but one which the rail carriers might be required to use as a general basis in revising and simplifying the classifications and class-rate structures.

The element of value to be used is the weighted average of domestic articles at point of manufacture and of imported articles at port of entry, but it is admitted that much must be left to judgment in this respect. Nine groups of value are suggested, stated in cents per pound over the lower but not over the higher amount, as follows: 0 to 5 (base group), 5 to 10, 10 to 15, 15 to 25, 25 to 50, 50 to 100, 100 to 200, 200 to 400, and over 400 (maximum group). It is conceded that the formula would have to be adjusted in the event of a substantial rise or fall in general values.

Weight density determines to a certain extent the relative efficiency of the utilization of equipment, because there is a direct relation between the cubical loading capacity and the maximum load which a vehicle can carry. The formula uses as a base for this factor 22½ pounds per cubic foot as a maximum density, although the density of commodities handled in railroad boxcars ranges up to 180 pounds and

over per cubic foot. The six groups suggested to take care of the element of weight density in classifying articles are, 22½-pound group to include freight weighing 20 pounds and over; 17½-pound group, 15 pounds but under 20; 12½-pound group, 9.25 pounds but under 15; 7½-pound group, 6.75 pounds but under 9.25; 5-pound group, 4.25 pounds but under 6.75; and 2½-pound group, under 4.25 pounds.

Theoretically, a car of a given cubic capacity will carry approximately 28 percent greater load of a commodity having a density of 22½ than of one with a density of 17½ pounds, 80 percent more than one of a density of 12½ pounds, 200 percent more than one with a density of 7½ pounds, 350 percent more than one of a density of 5 pounds, and 800 percent more than one with a density of 2½ pounds. It is claimed that actually relative efficiency in the utilization of cubic space increases as the density diminishes. The weight of 22½ pounds is described as the optimum or most favorable density in handling traffic as respects transportation costs, and it is stated that package freight having greater density has little or no advantage over the optimum in respect to transportation economy. For the reasons given, the motor carriers propose the following relations of other densities to the base of 22½ pounds; 17½ pounds, 125 percent; 12½ pounds, 175 percent; 7½ pounds, 250 percent; 5 pounds, 350 percent; and 2½ pounds, 600 percent. These relations are said to be predicated, to a large extent, on what the traffic will bear, and are the result of experimentation with various percentages.

Value is one of the elements to be considered in the classification of articles. The motor carriers suggest that in determining this element the intrinsic value of a given article and its economic essentiality and utility must be considered and evaluated for classification purposes. The necessity therefor is the failure of some traffic, highly essential but of low value, to meet fully the transportation burden. To offset this failure, articles of higher value and less economic utility must be rated above the average cost of the service; otherwise it would not be possible to maintain the transportation system. In the formula the lowest-valued articles, those in the 5 cents per pound group, are given a base rating factor of 100 percent. Rating factors suggested for the other per-pound value groups are as follows: Between 5 and 10 cents, 105 percent; between 10 and 15 cents, 115 percent; between 15 and 25 cents, 125 percent; between 25 and 50 cents, 140 percent; between 50 and 100 cents, 160 percent; between 100 and 200 cents, 180 percent; between 200 and 400 cents, 200 percent; and over 400 cents, 225 percent. The manner in which these percentages were determined was not explained.

Rating factors, determined as described, are shown in what is called a "Value-Density Table," reproduced below:

Value in cents per pound	Percentage	Density per cubic foot, in pounds					
	Base	22½ (base)	17½ (125 percent)	13½ (175 percent)	7½ (250 percent)	5 (350 percent)	2½ (600 percent)
Over 0 and not over 5	Base	50	62½	82½	125	175	300
Over 5 and not over 10	105	52½	65½	92	130	180	310
Over 10 and not over 15	115	57½	72	100	135	190	325
Over 15 and not over 25	125	62½	78	107	145	200	340
Over 25 and not over 50	140	70	86	117½	162½	215	365
Over 50 and not over 100	160	80	99	135	187½	235	410
Over 100 and not over 200	180	90	110	150	210	250	425
Over 200 and not over 400	200	100	122½	165	235	275	435
Over 400	225	112½	135	180	250	300	450

In the foregoing table, the density rating factors for the various density groups are obtained by applying the percentages shown horizontally to the base (the figure 50); and the value rating factors are determined by applying the percentages shown vertically to the base (the figure 50). For example, the rating factor of 62½ in the 17½ pound group is 125 percent of the rating factor of 50 in the 22½ pound group. If the article is in the value group of over 5 and not over 10 cents per pound, the density-value rating factor becomes 65½ which is 105 percent of 62½.

The rating factors as shown in the table are converted into 23 percentage groups, and to each group is assigned a percentage, which in some instances is the average of the rating factors in the group. These groups are then converted into 15 numbered and 8 lettered classes, the former ranging from class 1 (100 percent) to class 15 (50 percent), the lowest class proposed, and the latter from class A (450 percent) to class H (110 percent). The relation between the numbered classes is such that beginning with class 15 and proceeding upward to class 1 each class is not less than 95 percent of the next higher class, but differences proposed between the lettered classes are greater. The following table shows the range of the rating factors, the mean rating factor, and the classes into which articles would be placed by the use of the mean rating factors:

First and lower classes

Rating factor range	Mean rating factor	Class	Rating factor range	Mean rating factor	Class
98 to 105	100	1	65½ to 68	67	9
93 to 97	95	2	63½ to 65	64	10
89 to 92	90	3	60 to 62	61	11
85 to 88	86	4	57 to 59	58	12
80 to 84	82	5	54 to 56	55	13
77 to 79	78	6	52 to 53	52½	14
73 to 76	74	7	50 to 51	50	15
69 to 72	70	8			

Classes higher than first class

Rating factor range	Mean rating factor	Class	Rating factor range	Mean rating factor	Class
416 and up	450	A	171 to 212	189	E
333 to 415	369	B	136 to 170	151	F
266 to 332	297	C	116 to 135	121	G
213 to 265	236	D	106 to 115	110	H

The ratings in the value-density formula would be readjusted or modified according to the utility of the article. Basic necessaries would take 100 percent of the rating shown in the foregoing table, and the following groups of commodities would be related to the basic-necessaries group by the following percentages: Basic raw materials and unprocessed farm products, 85 percent; processed farm products, 90 percent; industrial materials, 95 percent; partial necessaries, 105 percent; industrial equipment, 110 percent; luxuries and accessories, 115 percent. The 85, 90, and 95 percent groups would be subject to class 15 as minimum for less-than-carload traffic. These figures represent the judgment of proponents and are not derived from any test.

The ratings determined by the value-density formula, as modified by the utility percentages, would be further modified to reflect the inherent qualities of the particular article in respect of susceptibility to theft or damage, its contaminating or perishable character, its stowage possibilities, size, weight and shape of package, and the care or attention necessary in transporting it. The consideration to be given these elements must be a matter of judgment based on transportation experience.

It is proposed that the same classification be used for less-than-carload and carload freight, except that in the case of low-grade raw materials and unprocessed farm products which move exclusively, or almost exclusively, in carloads, special carload classes should be set up. The nature of these special classes or the manner in which they should be determined are not elaborated. It is also suggested that there should be dual scales of class rates for less-than-carload and carload traffic, and that such scales, if properly constructed, would remove any necessity for carload ratings different from less-than-carload ratings on most articles.

In presenting the formula, the motor carriers admitted that in the classification of articles necessarily judgment must be exercised, in marked degree, and stated that the particular rating factors which they suggest are put forth merely to illustrate what they think might be done. The principles of classificaion might be appraised in a different and equally satisfactory manner by others. The important thing, in their opinion, is not so much what particular rating factors are

finally prescribed, but that a clear-cut, precise, and uniform definition of principles be made and the weight to be uniformly accorded them be defined.

Respondents challenge the so-called formula as not a formula at all, but only a beginning for the exercise, as always, of judgment by classification experts respecting the proper classification of particular articles. Several comparisons of existing ratings with those obtained by use of the formula were submitted. They are:

	Present less-than-carload ratings (percent of first class)	Formula rating (percent of first class)
Mattresses	150	189
Cigarettes	85	121
Hats and caps	200	450
Ice-cream cones	100	236
Bakery goods	70	100
Rock-wool batts	85	284

The observations made in respect to the analysis of the information furnished by respondents regarding the classification elements of weight density and value are applicable here. In other words, we think that a formula such as is here suggested by the motor carriers is not practicable for use by the rail carriers universally. As stated, it is designed for package freight only, but does not distinguish between the containers used or the manner of packing, and makes no real provision for articles of great weight density or high value, nor, of course, for bulk freight.

CONCLUSIONS AND FINDINGS AS TO CLASSIFICATION OF FREIGHT

These investigations afford the first opportunity for us to pass upon ratings as a whole in all classifications governing class rates on interstate and foreign traffic between all points throughout the United States. No recommendation regarding ratings was made in *Consolidated Classification Case*, *supra*, for reasons stated in that report.

Section 1 (4) of part I of the act provides that it shall be the duty of every common carrier subject to that part to furnish transportation upon reasonable request therefor, and to establish just and reasonable classifications applicable to freight rates and charges; and section 1 (6) prohibits every unjust and unreasonable classification. Section 3 (1) declares that it shall be unlawful for any common carrier subject to part I to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect

whatsoever. Section 15 (1) of the act requires us to find and prescribe what will be the just, fair, and reasonable classification to be thereafter followed. Under the provisions of the act, we are empowered and directed to determine whether the present classifications of freight are unlawful in any respect, and, if they are unlawful, to require the establishment of a lawful classification.

The notice of January 9, 1940, to the parties and the public stated that one of the matters to be considered in this investigation was whether the establishment throughout the country of a rail and water classification, simplified and uniform, or more nearly uniform when compared with the present consolidated freight classification, would be lawful and practicable. They were informed that in the earlier stages of the hearings evidence would not be received pertaining to the classification descriptions, minima and ratings on individual articles, save to the extent necessary to develop and illustrate facts relevant and material to the general aspects of the matters in issue.

At the hearing the evidence produced relating to the classification of freight consisted chiefly of comparisons of the ratings in the three major classifications, the effect of the ratings upon the charges paid by shippers in the principal freight-rate territories, and the extent to which the classifications have been departed from by the establishment of exception ratings and commodity rates. There is no evidence which would enable us to determine whether any particular classification rating, description, or carload minimum is unreasonable. Nor was any specific formula proposed for use in the construction of a revised classification, except that advanced by certain motor-carrier interests.

The evidence and arguments of most proponents of changes in the classification were directed to the propositions that there should be a uniform classification throughout the United States, that the application of the official classification should be extended to embrace the entire country, or the South and large sections of the West, and that the percentage relations between the classes should be uniform in all rate territories. There was a suggestion by some that the ratings in the exceptions should be substituted for those in the classifications, but such exception ratings are probably more diverse than the ratings in the classifications. A plan proposed for simplification of the classifications contemplates stating the classes in percentages of 100 with uniform relations between the classes.

Uniformity in classification has been an objective since the passage of the act in 1887. Progress in that direction has been made, and there is now substantial uniformity in classification rules and descriptions, and in the ratings of class 70 and higher. Much of the

present uniformity in ratings is theoretical rather than actual, in that while its exists as to the classifications proper, exceptions to the respective classifications provide literally thousands of lower ratings on the same articles. The exceptions may apply in one territory and not in another, or they may apply in parts of but not all the same territory. In recent years exception ratings have increased in number, principally as the result of competitive forces, and apply to a greater volume of traffic than is transported under ratings in the classification.

There is less uniformity in the carload than in less-than-carload ratings, except in the South where the 3,500 less-than-carload exception ratings were established in 1940. This is owing partly to the fact that the relations between classes lower than class 70, which embrace most of the carload ratings, are different in the three major classifications, because the number of regular classes in the classifications varies, and because of the absence in a particular classification of a class whose percentage relation to first class is the same as that of a class in another classification. In addition, differences in ratings on the same article in the three major classifications have been influenced by revenue needs of the carriers in the respective territories, by variations in rate levels, by competition between carriers, by pressure of shippers, and by the diverse judgments of the members of the several classification committees.

Few question the desirability of classification uniformity, but those who oppose uniformity contend that it is not practicable. This contention is based primarily upon the apprehension that in any unification many ratings will be reduced, thereby affecting the revenues of the carriers, and that established relations between shippers and between articles will be altered by any changes. Dissimilar conditions in the different territories and their effect upon the movement of traffic also are advanced as justifying varying ratings in the several classifications. The present classifications are said to reflect the needs of shippers and carriers, and the methods employed in the classification of articles are claimed to be duly responsive to changes in conditions as they occur. It is asserted that these results would not be possible under a uniform classification, except by the establishment of exception ratings and commodity rates; and if they are established in large number to meet the needs of commerce, there would be only theoretical uniformity, and the actual situation would remain the same.

From a practical standpoint, unification of ratings would remove serious complications, encountered in border areas where classification territories adjoin, in connection with through interterritorial rates governed by one of the classifications. So long as there were no such rates, particularly class rates, as was predominantly the situation before 1928, differences between the classifications presented compara-

tively few tariff problems, because the through rates were made by combining rate factors to and from the territorial gateways, and the application of a rating to one factor different from that governing the other caused little difficulty. But the advent of interterritorial class rates, governed by a single classification, created complicated tariff problems, numerous instances of undue prejudice and preference, departures from the long-and-short-haul and aggregate-of-intermediates provisions of section 4 of the act, and rates different in opposite directions between the same points.

The situation gave rise to many complaints, required the granting of relief from section 4, called for the prescription of the rates in effect in one of the territories, as the minimum basis, and necessitated the resort to supplementary distance scales of rates in order to avoid excessive differences between intraterritorial rates to border points and interterritorial rates to points just beyond the border.

The situation created by the diversity of ratings and classes in the several classifications, the lack of uniformity in percentage relations between the classes, and the designation of classes in the classifications by different numbers or letters, have combined to compel the establishment of countless exceptions which have shorn the ratings in the classifications of much of their usefulness and proper function. This is shown by the fact that the volume of traffic, particularly in carloads, moved at class rates subject to ratings in the classifications is relatively small both intraterritorially and interterritorially, and is considerably less than that moved at rates under exceptions. It is clear that the existing classifications are outmoded and should be revised.

Although classification is not an exact science, no convincing reason appears why the same principles of classification should not be applied in every territory, to the same article of commerce, or why substantially the same weight should not be accorded to those principles, in determining the rating of the article for movement anywhere in the country.

The alleged differences in conditions in various portions of the country, referred to by those opposing a uniform classification, and considered by them as insurmountable obstacles to uniformity, are principally competition, variations in territorial rate levels, and differences in the composition of traffic. Competition may exist between dissimilar articles used for the same purpose, between shippers in different territories, and between transportation agencies. None of these forms justifies diverse ratings in different territories. Exceptions to the classification may be essential in order that competition between shippers or with other forms of transportation may continue, but in

the process of providing classification ratings, it is improper to give such competition any weight.

Variations in the territorial class-rate levels have been responsible to a degree for some of the differences in ratings in the several classifications. Where the level of rates in one territory was higher than in another, ratings in the former were sometimes made lower in order to offset, wholly or partly, the rate disadvantage of the shipper in the higher-rated territory. This disadvantage is usually removed or lessened by the publication of exceptions or commodity rates. Classifications are not the correct media for remedying inequalities in territorial class-rate levels, which should be accomplished by modifying the rates themselves. Where adequate justification exists for lower charges in a portion of a territory, or from and to particular points, the proper remedy is the establishment of lawful exceptions to the classification, or commodity rates. The situation described does not justify exceptions that have territory-wide application and afford relatively lower rates than in the immediately adjoining or adjacent territory.

While exceptions to classifications are not in issue in this proceeding, it is difficult to understand how a particular rating on a given article or description of traffic is justified for application throughout an entire present classification territory, but is not extended to an adjoining territory. It would be unusual if the justifying conditions ended abruptly at the territorial boundaries.

Differences in classification ratings are defended upon the ground that they are justified by differences in the composition of traffic in the several territories. Thus in one territory, there may be a large movement of low-grade commodities on which the ratings are relatively low and a small movement of manufactured articles on which the ratings are relatively high, and in another territory the reverse may be true. The contention is that in order to obtain the necessary revenue, it is proper to make the ratings higher in one territory than in another. This presupposes that in the determination of a reasonable rating consideration and weight must be given to the volume of the traffic in the respective territories.

We believe that the assignment to the same article of commerce of a rating which is different (in terms of percentage relation between class rates governed thereby) throughout one territory from the rating in another, because the article moves in large volume in the one as a whole and in small volume in the other, causes undue preference and prejudice between the shippers in the two territories, as well as between the traffic and between the territories. A heavy movement between particular points might be so great and regular as to justify com-

modity rates between such points lower than the corresponding rates under classification ratings, and heavy movements between many points in a broader, though localized, area might justify exceptions to the classification restricted to such area; but neither situation would warrant classification, or exception, ratings throughout one of the present extensive classification territories, different from those in the adjoining territory.

Probably the principal objection of respondents to a uniform classification is their apprehension that its achievement may adversely affect their revenues. Sufficient revenues to maintain and operate the carriers are of course essential, but their needs should not be satisfied by practicing undue preferences and prejudices in ratings such as are shown by the evidence. The revenues required should be provided by rate levels high enough to produce funds for their needs, and not by resort to increases in classification ratings that cause unlawfulness. The aim for uniformity is not merely for the sake of uniformity, but to remove the resulting unjust differences in rates.

From the standpoint of classification of freight for the ascertainment of class rates that are themselves on a lawful basis, no sound reason has been adduced by respondents or other opponents why there should not be complete unification of the ratings throughout the country. The fact that uniformity has progressed to the present degree is proof that it should be practicable as to all articles.

Respondents and shipper interests, mostly in official territory, plead that the railroads' classification committees be permitted the continued freedom of action to determine the classification ratings according to their fully informed judgment of conditions prevailing in their respective territories. They imply thereby that the committee members do not possess adequate knowledge, or can not obtain information, concerning adjoining territories. This plea ignores the significant fact that each of the three major classifications has extensive interterritorial application, and the committee members must of necessity comprehend the conditions in other territories. Thus, official classification governs class rates from Norfolk, Va. to Duluth, Minn., and from Salt Lake City, Utah, to New York, N. Y.; southern classification, from New Orleans, La., to Eastport, Maine, and from Minot, N. Dak., to Miami, Fla.; and western classification, from Brownsville, Tex., to Bay City, Mich., and from Charleston, S. C., to Cheyenne, Wyo., as well as transcontinental traffic between the Pacific coast and the Atlantic seaboard.

Long before our decisions prescribing interterritorial class rates, the carriers subjected to a single classification the interterritorial rates which they had voluntarily established. Of the latter character may be

mentioned transcontinental rates, governed by western classification; joint rates between central territory east of Illinois and Duluth and Twin Cities, Minn., and the intermediate area in Minnesota and Wisconsin, and from trunk-line territory to the latter points and area, governed by official classification; and through rates between the Southwest and official territory, and from parts of western trunk-line territory to Mississippi Valley, governed by western classification.

Moreover, conditions are not the same throughout the respective territories within which official, southern, and western classifications govern, and which embrace roughly 14, 13, and 73 percent of the nearly 3 million square miles of land area of the country. There are marked contrasts in conditions between northern Maine and southern Illinois in official territory, Florida and Kentucky in southern territory, and North Dakota and southern California in western territory, yet the classification committees have determined upon one rating for a given article throughout each territory. Despite the fact that conditions are not shown to vary in homogeneous regions, like the Mississippi and Ohio River Valleys and southern West Virginia and Virginia, through which pass the present territorial dividing lines consisting only of rivers or railroads, the committees have developed classifications in neighboring sections on either side of such lines that are different, and ratings on many articles vastly different.

It is apparent from the record that members of the classification committees, who have expert knowledge of transportation, economic, production, commercial, and industrial conditions sufficient to determine ratings within these extensive classification territories and between them, acting as one committee, if willing, could initially decide upon uniform ratings for the entire country throughout which they now determine the ratings, with close approximation to the standards of justness and reasonableness laid down in the act. They have done so, but only in part.

The preponderance of the testimony is that of the various classifications now in force, or which have been suggested upon the record, the pattern of the official classification is the one which best comports with the requirements of the statute that the individual and joint classifications shall be just, fair, and reasonable, for application uniformly throughout the country. This, however, does not carry the implication that the official classification as it stands is suitable for general application. The existence of the numerous exception ratings which have been required by the exigencies of commerce, and the almost total omission to make use of the intermediate columns prescribed in *Eastern Class Rate Investigation*, *supra*, except by withdrawing the commodities from the classification, are most persuasive

that a rerating of the official classification itself is necessary so that the individual ratings therein shall be reasonable, fair, and just. To this end it will be necessary to examine the various exceptions upon their merits, and as far as possible to weave them into the going classification. Only when this is done can any classification be said to be fair, just, and reasonable. Nevertheless, there must be a pattern, and the pattern which seems to us to comport best with the standards of the act is that of the official classification, with the added classes set forth as percentage columns in Finding 1 of the report in *Eastern Class Rate Investigation, supra.*

Respondents and certain others assert that on this record we cannot require a change in any of the classification ratings because no evidence was received concerning individual articles. We think they are in error. Abundant evidence has been received showing that the differences in classification ratings compel shippers, in each of the classification territories, to pay on certain articles transportation rates that are relatively higher than the rates paid on the same articles by shippers in one or both of the other territories, considering present class-rate levels in the respective rate territories. In fact, on many articles a shipper in a lower-rated territory must pay higher rates than one in a higher-rated territory, owing to differences in classification ratings. The showing made is typical of the entire situation at present, and would continue so with whatever rate level or levels we may find lawful in docket No. 28300 or in any other proceeding. The duty is not imposed upon us in a proceeding of this character to receive and consider evidence as to each of the more than 20,000 less-than-carload and carload ratings in the classifications, and to find as to each of them whether the rating is lawful. General findings may be made as to classifications and territories as a whole. No adequate justification has been offered for the wholesale advantages and disadvantages resulting from the classification differences.

The primary purpose of a freight classification is to assign each article, or a group of articles, to a class according to well-known classification principles or elements which recognize distinctions from a transportation standpoint, along fairly broad lines, in order to meet the needs of commerce. None of the principles or elements should be controlling, but all that are relevant should be considered. Among them are: Weight per cubic foot and value per pound as packed for shipment; liability to loss, damage, waste, or theft in transit; likelihood of injury to other freight with which it may come in contact; risks due to hazards of carriage; kind of container or package as bearing upon the matter of liability or risk; expense of, and care in, handling; ratings on analogous articles; fair relation of ratings as between all articles; competition between articles of different descrip-

262 I. C. C.

tion but largely used for similar purposes; commercial conditions and units of sales; trade conditions; value of service; volume of movement for the entire country in either less than carloads or carloads; adaptability to movement in carloads; and carload minimum weights best to carriers and shippers. These transportation characteristics would be substantially similar on most articles irrespective of the territory in which the movement occurs.

Classification of freight has long been recognized as an important phase of rate making. Section 1 (4) and (6) of the act, already referred to, read in connection with section 15 (1), make it the specific duty of all common carriers by railroad to establish, observe, and enforce just, fair, and reasonable classifications of property for transportation. The basic considerations which should determine the classification of an article, as previously explained herein, are generally the same in all territories. That being true, it follows that wherever differences in transportation conditions from a geographic standpoint are sufficient to require recognition in the rate structure, the situation should be met in the levels of the rates themselves, supplemented, wherever desirable, by the employment of a limited number of exception ratings in connection with the established rates, rather than in the basic freight classification itself. The use of classifications to accomplish such purposes inevitably leads to inequitable and indefensible results. Without reiterating the defenses urged for the large number of disparities that now exist in classification ratings in the several territories, it is clear that they are not now reasonable and are unjustified. Furthermore, the departure from the standard classification ratings brought about by the employment of an ever increasing number of exception ratings furnish ample proof, in addition to the other facts of record which point to the same conclusion, that the three primary classifications and the Illinois classification maintained and observed in the several territories are not presently meeting the requirements of the law and will not do so for the future.

ULTIMATE FINDINGS

Upon the record, therefore, we find:

1. That the present official, Illinois, southern, and western classifications, insofar as the ratings named therein are concerned, as a whole, are, and for the future will be unjust and unreasonable, in violation of section 1 (4) and (6) of the act.

2. That the several classifications named in finding 1, insofar as the ratings therein are concerned, as a whole, because of the substantial number of differences in such ratings that now exist, result, and will result in the future, in undue and unreasonable preference, advantage, prejudice, and disadvantage as between shippers and receivers

of freight in interstate commerce and as between classification territories, in violation of section 3 (1) of the act.

3. That in the assignment of commodities to various classes in the classification, in order that the classification may be just, fair, and reasonable, it is essential not only that the grouping of analogous articles and those possessing similar transportation characteristics, according to the accepted principles of classification recognized by us, shall be observed, but it is essential that there be maintained scales of class rates, providing different rates for the several classes of property, which shall bear a just and reasonable relation for the various classes each with the others. That, as stated in the report, the respondents have fixed 100 percent for first class, and 85 and 70 percent thereof as proper relations for classes 2 and 3, to be applied when using class rates for commodities falling within those three classes. Such percentages have also been found by us to be just and reasonable for such application of class rates to commodities classified as falling within class 1, class 2, and class 3, in each of the classifications embraced in the Consolidated Freight Classifications, and also generally throughout the country. The remaining percentage relations, except those above 100, in the various classifications, however, differ in their percentage relation to the classes as to which uniformity is observed, as stated in the report, and therefore the apparent uniformity denoted by the use of identical class descriptions is in point of fact inharmonious with reference to the classifications considered as a whole, because of the varying relations of other classes to each other and to classes 1, 2, and 3 in the different territories, and because differing classification ratings have been assigned to other commodities in the several territorial classifications.

4. That it is impossible, without a basic unity in classification ratings throughout the country, to maintain a just and reasonable relation between the class rates on commodities moving in carload and less-than-carload lots, or as between competing commodities moving at class rates.

5. That it is entirely feasible for the respondents to establish, observe, and enforce classifications of property for transportation, with reference to which their class rates are or may be made or prescribed, which shall be uniform throughout the territory served by the several respondents. That the establishment, observance, and enforcement of such a uniform classification of property for transportation, with reference to which the class rates of the respondents are or may be made or prescribed, will be just and reasonable, and that to the extent the classifications established, observed, and enforced by them with reference to which their class rates are or may be made or prescribed, are different and nonuniform, to that extent their existing classifications

of property for transportation, as embraced within the Consolidated Freight Classification, are, and will be for the future, unjust and unreasonable and in violation of section 1 (4) and (6) of the Interstate Commerce Act.

6. That it is not intended that the foregoing findings with respect to uniformity shall prevent the making of exceptional classification ratings when required either by the provisions of the Interstate Commerce Act or for commercial or competitive reasons, provided such exceptional ratings may be justified individually upon their own merits, and shall not have the effect of creating a violation of some provision of the Interstate Commerce Act or of being inconsistent with the national transportation policy, and shall not tend to impair the general requiremen. of uniformity of classification hereby found to be just and reasonable.

7. That upon the basis of the present record, the classification pattern prescribed for application in connection with class rates in eastern territory, known as the official classification, comports better with the requirements of the statute that the classification should be just and reasonable than do either of the remaining classifications embraced in the Consolidated Freight Classification. The general basis of the official classification, including the percentage relation between the classes, would be just and reasonable for application uniformly by the respondents, and should be so established by them within a reasonable time.

8. That it is just, fair, and reasonable that a uniform classification should be established which should contain (*a*) classes, intermediate between the several classes in the official classification, corresponding to the columns prescribed in finding 1 in *Eastern Class Rate Investigation*, 164 I. C. C. 314, 373; 171 I. C. C. 481, 499; (*b*) the present regular classes which are multiples of class 1 (class 100); and (*c*) additional classes for commodities which should take lower ratings than the lowest class in the official classification. And that these classes in the uniform classification should be as follows: Classes 400, 300, 250, 200, 175, 150, 125, 100, 92.5, 85, 77.5, 70, 65, 60, 55, 50, 45, 40, 37.5, 35, 32.5, 30, 27.5, 25, 22.5, 20, 17.5, 16, 14.5, and 13.

9. That substantial uniformity exists in classifications as to descriptions of articles and carload minimum weights.

Respondents are hereby given reasonable opportunity to initiate such uniform classification by their own collective action before we undertake the task, and they will be expected within 90 days from the service of this report to advise us whether they will undertake to make and tender to us a classification based upon the findings herein made. If the respondents shall decline so to undertake to make and tender a classification or shall omit to respond within the time specified, we

retain jurisdiction to make such further order in the premises as may be proper.

The uniform classification which we find will be necessary to comply with the statute must be closely connected with the class scale or class scales which are to be applied, both to insure proper preservation of revenue for the carriers and that the rates shall be just and reasonable as respects the shipper, and otherwise in conformity with the act. The question as to whether the existing class scales are just and reasonable, as required by section 1 (4) and (5), and as to whether they give any undue preference or advantage which is forbidden by section 3 (1) of the act, are considered in the following part of this report. In that part we will determine and state the rate basis applicable to a uniform classification which the present record appears to justify.

PART II

HISTORY OF PROCEEDING AND ISSUES

Docket No. 28300, is an investigation into and concerning the lawfulness of interstate class rates, determined by ratings in official, Illinois, southern, and western classifications. The ratings include those in the classifications stated under the regular numbered or lettered classes or as percentages of first class, but none other. The class rates included were those applicable to the transportation in interstate or foreign commerce of property by common carriers by railroad, or by water, or partly by railroad and partly by water, subject to the Interstate Commerce Act, and the charges resulting therefrom, between all points in the United States lying on and generally eastward of the following line: The western boundaries of the States of North Dakota, South Dakota, and Nebraska south to the main line of the Union Pacific Railroad Company, thence along that railway west to Cheyenne, Wyo., thence south on the line of The Colorado and Southern Railway Company and paralleling railroads passing through Denver, Pueblo, and Trinidad, Colo., to the border of the State of New Mexico, thence successively east, south, and west along the latter border to the Rio Grande (excluding any point in New Mexico), thence along the Rio Grande to the Gulf of Mexico. All common carriers subject to the Interstate Commerce Act engaged in the transportation described above were made respondents. The investigation does not embrace rates between points in what is known as mountain-Pacific territory or those between that territory and the remainder of the United States; or rates between points within the territorial scope of the proceeding which are determined by exceptions to the classifications or commodity rates.

Section 5 (b) of the Transportation Act of 1940 authorized and directed us to institute an investigation into the rates on manufactured

products, agricultural commodities and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to part I of the Interstate Commerce Act, as amended, for the purpose of determining whether such rates are unjust and unreasonable or unlawful in any other respect. In our annual report, 1940, we said at page 30:

> The extensive class-rate and classification investigations above discussed may, we think, very properly be regarded as a highly important first step in this general investigation which Congress has directed us to institute.

The purpose of the investigation is to determine whether the rates and charges in issue, or any of them, are unjust, unreasonable, unduly prejudicial, unduly preferential, or otherwise unlawful, and to make such findings and order or orders as may be proper.

Although rates applicable to the transportation of foreign commerce also are in issue, no evidence was offered pertaining to specific import and export rates, or as to the structure of export and import rates. In view of the record, the discussion herein will be understood to concern only the interstate rates.

All-water and rail-and-water rates.[16]—Included among the rates in issue are lake-rail rates by way of the Great Lakes, all-barge and barge-rail rates applicable on the inland waterways, and all-ocean and ocean-rail rates subject to our jurisdiction on July 29, 1939, the date of the order of investigation. Upon request of parties in Docket No. 26712, Rail and Barge Joint Rates, for the exclusion at the initial hearings, of evidence pertaining to the joint barge-rail class rates applicable partly on the Mississippi and Warrior Rivers and their tributaries and the differentials below all-rail rates used in the determination of such rates, because of the pendency of Docket No. 26712, evidence respecting the lawfulness of such rates and differentials was not received at the hearings.

Although the water carriers publishing or participating in the lake-rail, all-barge, all-ocean and ocean-rail rates in issue were made respondents to this investigation, none of them introduced any evidence and only a few disclosed their position at the hearings. Likewise there was no evidence with respect to any of these rates by the rail respondents or shipper interests, except by representatives of New Orleans (La.) Joint Traffic Bureau, Minneapolis (Minn.) Traffic Association, St. Paul (Minn.) Association of Commerce, Duluth

[16] Water-rail denotes that the rates apply over, or that the routes include, the lines of both water and rail carriers, irrespective of whether the actual sequence is water-and-rail, rail-and-water, or rail-water-and-rail; similarly ocean-rail, barge-rail, lake-rail, and canal-rail indicate more specifically that the rates or routes contemplate transportation on the Atlantic Ocean or Gulf of Mexico, on barges on inland waterways, on boats on the Great Lakes, and on barges on canals, respectively.

(Minn.) Chamber of Commerce, and the North Dakota commission.

The representative of Great Lakes Transit Corporation stated that if the general levels of all-rail class rates are fixed so as closely to approximate the present levels, that corporation will be satisfied with the maintenance of the present differential relations between lake-rail and all-rail rates; but if radical changes are made in the all-rail rates so that the maintenance of the existing differentials would work hardships, it would be compelled to ask for relief. He was unable to discuss definitely the measure of the differentials because of uncertainty as to the level of the all-rail rates that may result from this investigation, but stated that in any event the lake-rail rates of Great Lakes Transit Corporation should be governed by the same classification and exceptions thereto as govern the all-rail rates.

The position of the other water carriers [17] is that it would be wholly impracticable to offer evidence in this record as to the amounts of the differentials between all-rail and rail-water rates that should reasonably be fixed if a change in the level of the all-rail rates should be brought about as a result of this proceeding. The reasons therefor are; (1) Because of the scope of the proceeding, it would hardly be practicable to go into the question at any length without unduly burdening the record; (2) the steamship companies (except to a very limited extent) are not operating their coastwise services, their vessels having been taken over by the Government; (3) there is no way of forecasting what, if any, new all-rail rates will be prescribed; and (4) the traffic departments of these companies have been so drastically curtailed that they are not adequately equipped to prepare and offer evidence. The water carriers do not advocate any change in the all-rail rates, but if such rates are readjusted, they ask that provisions be made for differentials no lower than those now observed.

The territories covered by the differential rates in which the water carriers are interested are, briefly, as follows: Between trunk-line and New England territories and southern territories; from trunk-line and New England territories to trunk-line, central, western trunk-line territories and extended areas thereof and certain portions of southwestern territory, from trunk-line and central territories to north Atlantic ports; between New England territory and New York, N. Y., and its environs.

Only meager evidence was introduced by the Minneapolis, St. Paul, and Duluth interests concerning lake-rail rates, but they stated their general positions with respect thereto. The Twin Cities advocate greater differentials between lake-rail and standard all-rail rates be-

[17] Arwilines, Inc. (Clyde-Mallory Lines), Baltimore Steam Packet Company, Bull Steamship Line, Eastern Steamship Lines, Inc., Merchants and Miners Transportation Company, Philadelphia and Norfolk Steamship Company, and Ocean Steamship Company of Savannah.

tween the Twin Cities and eastern lake-rail rate areas A, B, and C as described in the lake-rail revision [18] between standard rail-lake and differential lake-rail rates from New York and New England to the Twin Cities, and between canal-lake-rail and standard lake-rail rates from New York to the Twin Cities. Canal-lake-rail rates are not in issue, and we are not empowered to prescribe specific through rates for the future over differential lake-rail routes, part of which are in Canada, because our jurisdiction is limited. Duluth's position is that if no marked changes are made in the all-rail rates from trunk-line and New England territories to western trunk-line territory, the present differentials between lake-rail and all-rail rates to Duluth should be continued. If decided changes in the levels of all-rail rates are prescribed, the carriers should be required to establish lake-rail rates lower than all-rail rates, giving consideration to the value of the service and the economy of water transportation, but lake-rail rates made on the equated mileage theory are opposed.

The New Orleans Joint Traffic Bureau neither supports nor opposes the efforts to readjust the class rates and is not asking for a revision of those rates. Its main interest is the continuance of class rates over the coastwise water routes through the gulf ports differentially lower than class rates that may be required to be established over all-rail routes between trunk-line and New England territories and points in the Southwest and Mississippi Valley, Memphis, Tenn., and south. If all-rail rates from and to the above territories are ordered reduced, we are urged to require reductions in the class rates over coastwise routes through the gulf ports which will preserve the existing differences between all-rail and coastwise rates.

Owing to the war, practically all water carriers which have participated in joint rates with the railroads have suspended operations because their vessels have been taken over by the Government for war purposes. The lack of evidence respecting such rates is doubtless due to this fact. As the present record is inadequate upon which to prescribe reasonable and otherwise lawful all-water or rail-water rates, no findings will be made with respect thereto, and they will not be discussed further in this report.

Subsequent to the close of the hearings, certain public authorities, shippers, and associations of shippers were permitted to intervene and to participate in future proceedings in both investigations.

HISTORICAL BACKGROUND AND GENERAL BASES OF PRESENT INTERSTATE ALL-RAIL CLASS RATES

The section of the United States embraced in Docket No. 28300 comprises all of official and southern classification territories, and

[18] *Lake and Rail Class and Commodity Rates*, 205 I. C. C. 101, 198.

about the eastern half of western classification territory. The boundaries of those territories are defined in part I of this report, and are sketched in appendix 1. Intraterritorial class rates between points within each classification territory are governed by the classification that bears the same name as the territory. Interterritorial rates are subject to the classifications as stated in part I of the report and as graphically portrayed in appendix 1.

Official territory encompasses New England, trunk-line, central, and Illinois territories;[19] southern territory lies south of official territory and east of the Mississippi River, and includes the Florida peninsula;[20] and the eastern half of western territory contains western trunk-line and southwestern territories, and southern Missouri.[21] Although ordinarily not considered a part of any rate territory, southern Missouri from a rate standpoint has been treated sometimes with either western trunk-line or southwestern territory. It will be discussed in this report under the headings of the former territory.

The description herein of the general bases of interstate maximum class rates and their history will set forth details sufficient only to present the principal aspects of the general rate structures. No attempt will be made to cover relatively minor variations in them, or departures therefrom in comparatively small sections of States or territories made by railroads for competitive reasons usually.

Present class rates within and between the rate territories embraced in this proceeding are founded upon distance scales of rates, or key rates in specific amounts between named points in the determination of which the scales were used as a guide, applicable to both single and joint-line movements, prescribed by us in several extensive in-

[19] Descriptions of the territories composing official territory are: New England, lying east of the eastern State-line of New York, but including points in New York State served directly by New England railroads and certain others, which takes in practically all points east of the Hudson River; trunk-line territory, extending westwardly from New England and the Atlantic Ocean to a line drawn through Buffalo and Salamanca, N. Y., Warren, Oil City, Pittsburgh, and Washington, Pa., Wheeling, Parkersburg, Charleston, and Gauley, W. Va., and central-Illinois territories, which are west of that line.

[20] The Florida peninsula is all that part of the State south of the Seaboard Air Line Railway extending from Jacksonville to River Junction, Fla.

[21] The boundaries of western trunk-line and southwestern territories and southern Missouri are depicted in appendix 1 hereto. To the extent affected, the western boundaries of these territories are the western limits of the territorial scope of this proceeding, and the eastern boundaries are the same as the eastern boundary of western classification territory. The southern boundary of western trunk-line territory west of the Mississippi River is as follows: On and north of the St. Louis-San Francisco Railway from St. Louis to Pacific, Mo., thence the Missouri Pacific Railway to Labadie, Mo., thence the Chicago, Rock Island & Pacific Railway to Kansas City, Mo., thence south along the eastern State line of Kansas, thence west along the southern State line of Kansas, thence west along the southern State line of Colorado to a point south of Trinidad, Colo. That is also the northern boundary of southwestern territory, except that east of Kansas it is Missouri's State line south and east of Kansas to the Mississippi River. The part of Missouri lying between those boundaries is termed southern Missouri in this report.

vestigations,[22] and subjected to the general increase of 1938.[23] The first of these investigations was the southern revision originally decided in 1925, followed by the southwestern in 1927, and the eastern and western trunk-line revisions decided at approximately the same time in 1930. In 1934 the western trunk-line revision and the southwestern revision were modified as to the measure of the rate scales. In 1935 the lake-rail revision was required, and in 1938 the western-southern revision.

Broadly speaking, in those revisions all-rail class rates on a distance basis were required to be established intraterritorially within New England, trunk-line and central territories and southern, western trunk-line, and southwestern territories, respectively, and between the territories named for relatively moderate distances; key rates mostly were prescribed interterritorially between points farther apart, except largely between official and southern territories, and as to all rates between western trunk-line and southern territories. A substantial grouping with the base points taking distance rates, and with the key points taking key rates, of all other points in the territories concerned was authorized and established. Water-rail rates prescribed in the revisions were made in relation to, but lower than, the all-rail rates.

Computation of distance rates over all-rail routes between territories or zones accorded different rate levels, except between official and southern territories, contemplated the addition of differentials or arbitraries for distances in specified areas, called the western trunk-line or laminated formula [24] where the differentials are imposed

[22] They will be termed "revisions" in this report, called by the following names, which revisions were prescribed in the proceedings cited: Eastern, *Eastern Class Rate Investigation* (1930), 164 I. C. C. 314, and supplemental reports, 171 I. C. C. 481, 177 I. C. C. 156, and 203 I. C. C. 357; southern, *Southern Class Rate Investigation* (1925), 100 I. C. C. 513, and supplemental reports 109 I. C. C. 300, 113 I. C. C. 200, and 128 I. C. C. 567; western trunk-line, *Western Trunk Line Class Rates* (1930), 164 I. C. C. 1, and several supplemental reports of which the sixth (1934), 204 I. C. C. 595, contains the principal bases for present rates; southwestern, *Consolidated Southwestern Cases* (1927), 123 I. C. C. 203, and a number of supplemental reports of which the twenty-first (1934), 205 I. C. C. 601, contains the principal bases for present all-rail class rates; western-southern, *Western-Southern Class Rates* (1938), 226 I. C. C. 497, and supplemental reports 231 I. C. C. 315, 232 I. C. C. 81, 238 I. C. C. 681, and 246 I. C. C. 119; and lake-rail *Lake and Rail Class and Commodity Rates* (1935), 201 I. C. C. 101, and supplemental report 214 I. C. C. 93.

[23] The rates described were subject also to the emergency general increase of 1942 during the period it was in effect, namely, March 18, 1942, to May 14, 1943, both inclusive.

[24] The formula was devised in the original report in the western trunk-line revision in order properly to reflect, in the interzone and interterritorial rates prescribed, the varying rate levels in the different rate zones and territories traversed. It requires the application of an underlying scale of rates, being the one prescribed for the lower or lowest-rated zone or territory affected, to the entire distance over such route, plus the differential or differentials for the remainder or successive remainders of the distance in the higher-rated zone or zones; provided, that whenever the route enters the same zone or territory more than once the distances are aggregated before applying the appropriate underlying scale of rates or zone differentials; and, provided further, that where the route passes directly from one zone or territory to another which adjoins but which is not on the next-higher rate level, the differential for the zone or zones of intermediate rate level not entered is nevertheless

on an underlying rate scale which is applied through for the entire distance. In the exception noted, differentials for distances in official territory are added to rate factors in the South. Distances used in all the revisions were those figured over the shortest possible rail routes by which carload traffic can be interchanged between carriers without transfer of lading, except where longer routes traversing territories or zones of lower rate levels produced rates appreciably lower than over the shortest route; but the resulting rates apply over one or more reasonably direct routes.

Key rates apply between so-called key points, for which were selected substantially all the larger centers of population and industry, supplemented by a sufficient number of less-important places in order to furnish an adequate framework for complete and workable rate structures. In determining the measure of the individual rates, the initial guides were amounts produced by the distance method, including appropriate differentials, modified by the weight accorded relevant practical considerations. Such considerations contemplated the grouping of other points with the key points under the same rates, the blanketing of key rates back over intermediate points to the next less-distant key point, observance of the long-and-short-haul provision of section 4 of the act, long-established custom, and well-recognized rate relations between particular points and ports. The influence of lower ocean and ocean-rail rates on all-rail rates between points in the Atlantic seaboard area, or points reasonably related thereto, also was given consideration. Points other than key points in areas of the respective territories accorded key rates are embraced with congruous key points so as to compose logical and natural groupings.

Distance rates are subject to key rates as maxima. All interterritorial rates are subject also to rates within one or the other territory as minima. Special provisions to fit unusual situations prevail; for example, as to rates to and from the environs of New York, N. Y., and rates for short and financially weak railroads. The maxima for all rates are the lowest aggregates of intermediate rates subject to the act.

Nearly all of the distance and key rates prescribed in the revisions referred to above were those on class 1, which is also referred to as class 100, because other columns of rates are percentages of such class rates. Percentages of class 100, depending upon the classification

added for a distance equal to that remaining in the higher-rated zone or zones, which distance is aggregated with any otherwise used in the same zone. The resulting rate is applicable in either direction between the two points.

It may be explained that the differentials for a particular zone represent the amounts that the scale rates for that zone are above those in the next lower-rated zone for the corresponding distance blocks. For that reason the formula contemplates the addition of the differential for an intermediate zone, even though it is not entered, equivalent to the aggregate distance remaining in the higher-rated zone or zones in order to build up to the rate level in the zones actually entered.

that governed, were prescribed for the lower regular classes. In addition, five of the revisions required that the class-rate tariffs affected should contain a number of columns of rates bearing certain percentage relations to class 100, four of which specified identical columns. All such percentages are listed in the following table, with indication of the particular percentage columns named in a given revision, and which of them were fixed for the regular classes. Percentages for classes under the Illinois classification are denoted also, although they were not prescribed by us, and that classification governs little interstate traffic.[25]

Percentage relations of regular classes prescribed, and columns required to be published in class-rate tariffs

Rate column (percent)	Revisions						Under Illinois classification
	Eastern[1]	Southern[2]	Western-trunk line[3]	Southwestern[4]	Western Southern[4]	Lakeral[4]	
	Class	Class	Class	Class			Class
100	*1	1	*1	*1			1
92.5							
85	*2	2	*2	*2			2
77.5							
70	*3	3	*3	*3			3
65							
60							
55	*R25	4	*4	*4			R25
50	*4						4
45		5	*A	*A			
42.5							
40		6					A
38							
37.5			*5	*5			5
35	*5	7					
32.5			*B	*B			B
30		8	*C	*C			
27.5	*6						6, C
25		9					
22.5		10	*D	*D			D
20		11					E
17.5		12	*E	*E			
16							
15							
14.5							
13.5							
13							
12.5							
12							
8.5							

[1] Rates are governed by official classification. At time of original report in the eastern revision, official classification still published R25, or rule 25, rating on certain article descriptive items, for which 70 percent was fixed, or the same as for class 3. The classification no longer contains rating R25.

[2] Rates, both intraterritorially and interterritorially, are governed by southern classification.

[3] Rate percentages shown are those for rates governed by western classification; where interterritorial rates are governed by official classification, they are the same as in the eastern revision.

[4] Rates, both intraterritorially and interterritorially, are governed by western classification.

[5] All rates apply interterritorially, and class rates are the same percentages as in the southern and western trunk line revisions, according to whether governed by southern or western classification, respectively.

[6] Class rates are the same percentages as prescribed in the eastern and western trunk-line revisions, according to whether governed by official or western classification, respectively.

* Indicates the percentage column required to be published in class-rate tariffs.

[25] The interstate application of Illinois classification is now confined to class rates between Illinois and points in the Indiana portion of the Chicago switching district, and to traffic between Illinois points traversing routes partly in Indiana on which the Illinois classification authorizes charges over intrastate routes between the same Illinois points lower than what the corresponding charges would be at interstate rates governed by official classification.

Removal of the unlawfulness found in these revisions resulted in the application of uniform percentage relations between the classes throughout official territory, southern territory, and the eastern half of western territory, respectively, and interterritorially when the rates are governed by the same classification. It also established harmony among rate levels, even though different levels were prescribed for defined parts of the same territory, in place of the great variations that had existed.

Intraterritorial rates.—The principal scales of class 100 rates prescribed in the important class-rate revisions for the respective territories, and for certain parts of those territories, including the general increase of 1938, are set forth in appendix 8.

Within official territory.—The bases for present rates in this territory were prescribed in the eastern revision. The rate history appears at pages 323–335 and elsewhere in the report therein (164 I. C. C. 314). For the purposes of that proceeding, official territory included the west-bank Mississippi River crossings in Missouri and Iowa, west-bank Lake Michigan ports in Wisconsin and in the Upper Peninsula of Michigan, the lines of the Chesapeake & Ohio Railway in Kentucky, and those of the Norfolk & Western Railway to Norton, Va., and Bristol, Va.-Tenn. It did not include rates to and from local points on the Southern, Atlantic Coast Line, and Seaboard Air Line railways in Virginia.

These rates are grounded upon the so-called eastern scale, shown in appendix 8. Neither the measure nor progression of that scale was modeled after any other, but the average of the class 100 rates for all distance blocks through 1,500 miles is 73.1 percent of the southern scale, 77.9 percent of the western trunk-line zone I scale, and about 62.3 percent of the southwestern (or zone III) scale.

The eastern scale was prescribed or employed for making rates over standard class I railroad lines, including all electric lines, engaged in the general transportation of freight, and all switching and terminal carriers. It determines the rates within trunk-line and central-Illinois territories, with differentials or arbitraries added in certain parts, and was used in constructing key rates between trunk-line-New England and central-Illinois territories. It fixes the distance rates between trunk-line territory and New England zones A and B,[28] being applied to and from zone A, with the addition of differentials that represent about 8.8 percent of the eastern scale for the distances in zone B.

Within New England, the scale in zone A is 105 percent of the eastern scale, and the scale in zone B is 110 percent of the zone A scale, or 115.5

[28] New England zones roughly are divided by a line drawn through Windsor, Vt., Concord, N. H., and Portland, Maine; the section south of that line being designated zone A, and north thereof as zone B.

percent of the eastern scale. Between these zones the zone A scale applies, plus differentials for distances in zone B the same as those used in making rates between zone B and trunk-line territory, which average about 8.8 percent of the eastern scale. Between zone B and other parts of official territory, no arbitraries are added.

Between points in zone C in Lower Michigan,[27] as well as the west-bank Lake Michigan car-ferry ports,[28] and between them and other points in central territory, the basis prescribed for interstate rates is the eastern scale plus differentials for distances in zone C, which average 8.8 percent of the eastern scale.

Special arbitraries, in distance or in cents per 100 pounds, are added to the distances or rates in applying the eastern scale to and from New York City and its environs, including provision for lighterage and floatage deliveries, from and to defined long-and-short-haul areas in trunk-line territory; and also in the rates from and to New England under the New England zone scales. From and to points on Long Island outside New York City, the rates include arbitraries over New York City. Distance arbitraries are represented in rates applicable over routes involving interchange movements across New York Harbor entirely or partly by car float, and where the rate-making distance is computed over routes of the New York, New Haven & Hartford and New York Central railroads.

Between designated Philadelphia, Pa., and Baltimore, Md., groups and trunk-line and New England territories, rates reflect distance arbitraries added to the actual distances to particular stations in those groups; and at Philadelphia a constructive distance is allowed where routes of less than 80 miles require crossing the Delaware River.[29]

In order to make rates to and from points on specified lines or branches of certain railroads in northeastern New York State, Virginia, West Virginia, and Kentucky, for distances on such lines or branches, carriers were authorized to add to the rate to the main-line junctions differentials representing 10 percent of the eastern scale in some instances, and, in others, arbitraries on a higher scale. The record does not indicate the extent, if any, to which the carriers have availed themselves of that authority.[30] These rate situations are not

[27] Zone C includes that portion of Lower Michigan north of a line drawn eastwardly from Muskegon through Greenville, Edmore, Alma, Midland and Bay City, excluding the "thumb" of Michigan.

[28] Subsequently the carriers voluntarily reduced the rates between the west bank Lake Michigan ports and trunk-line New England territories.

[29] As indicated, between these Atlantic port areas and central Illinois territories specific key rates apply, which include the additional amounts for port areas.

[30] For example, the Norfolk & Western Railway elected to publish rates to and from its Bristol and Norton lines in southwestern Virginia on the standard line eastern scale, without arbitraries. They were found justified in *Rates on Bristol and Norton Lines of Norfolk & W. Ry.*, 1933, 192 I. C. C. 315.

sufficiently important to develop at length in a statement of the general bases over nearly two-thirds of the United States.

Certain New England short lines were exempted from the requirement to establish joint class rates where none had been published previously.

Within southern territory.—Rates in this territory, founded upon the southern revision, were established January 15, 1928, and later modified. The preceding history is reviewed in the original report in that revision (100 I. C. C. 513) at pages 520 to 530.

A scale, known as the southern or K–2 scale, extending through 1,500 miles, was prescribed for general application in southern territory and is set forth in appendix 8 to this report. For distances in the Florida peninsula a scale of differentials, representing about 15 percent of the southern scale, was added.[31]

Modification of the application of the southern scale between points in Virginia on and south of the Virginian Railway and points in North Carolina was required by us and became effective October 27, 1936. It is termed the "border area" scale in appendix 8. It consists of a scale through 600 miles, in which the rates are the same as in the southern scale for distances between 200 and 400 miles and somewhat lower and higher than in that scale for shorter and longer distances, respectively.[32]

For distances through 190 miles, the carriers, on July 7, 1941, voluntarily reduced to the basis of the border area scale all rates throughout southern territory that previously had been constructed on the southern scale.[33] No corresponding change was made in the differentials imposed for distances in the Florida peninsula.

Arbitraries were authorized for short and financially weak lines.

Within western trunk-line territory.—The history of the class rates within this territory, interstate and intrastate, for upwards of 50 years preceding the decision in 1930, is recited in the original report in the western trunk-line revision (164 I. C. C. 1) at pages 23–36. It describes the numerous and varying rate bases, with widely differing percentage relations of the respective lower classes to class 100, evolved piecemeal by the carriers since the early railroad development of the West, by us upon many formal complaints against interstate rates, and as to intrastate rates, by the regulatory commissions of every State in the territory.

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[31] The southern scale of rates and the Florida scale of differentials were prescribed in the second and third supplemental reports on reconsideration in the southern revision (1926 and 1927), 113 I. C. C. 200, and 128 I. C. C. 567, respectively.

[32] This scale was first prescribed in *North Carolina Corp. Comm. v. Akron, C. & Y. Ry. Co.* (1935), 213 I. C. C. 259.

[33] This action came after the prescription of the scale referred to for determining lawful intrastate rates in North Carolina in *Class Rates Within the State of North Carolina* (1940), 238 I. C. C. 225.

In that report related distance bases of maximum reasonable interstate rates were prescribed. Western trunk-line territory, which for the purposes of the proceeding included no part of Illinois, was divided into three principal rate zones; and eastern and southeastern Wisconsin were accorded separate rate treatment.[34] Boundaries between zones are not on State lines. Scales of rates were provided for application between all points in each of the rate zones, the measure or level of the scale for zone I being the lowest. The scales for zones II and III were higher than the scale for zone I by approximately 12 and 20 percent, respectively.[35] For the eastern and southeastern portions of Wisconsin, the interstate bases prescribed were those fixed in the eastern revision for zone C in Michigan and for Illinois, respectively. Between these portions and the western trunk-line zones, the basis prescribed was the same distance basis hereinafter described in connection with interterritorial rates between those zones and Michigan zone C and Illinois territory.

In the western trunk-line rate structure that had been evolved up to the western trunk-line revision there were 10 classes, with no uniformity in percentage relations between them, governed by western classification and exceptions thereto. The prescription of official classification within eastern and southeastern Wisconsin was the only change made in the governing classifications and exceptions. The number and designation of classes, where they were to be governed by western classification, remained the same, but uniform percentage relations between them were provided. Rates published in purported compliance with the original report, as modified,[36] became effective December 3, 1931.

Rates within western trunk-line territory were subsequently required to be changed,[37] and the revision became effective August 20,

[34] These rate zones are as follows: Zone I, Upper Michigan, Wisconsin except the eastern and southeastern portions, the eastern and southeastern portions of Minnesota, Iowa, and the northern half of Missouri; zone II, the remainder of Minnesota, the eastern thirds of North and South Dakota, the eastern half of Nebraska, and the eastern third of Kansas except the southeastern corner; and zone III, the remainder of North and South Dakota, Nebraska, and Kansas, Colorado on and east of the common-point line extending through Denver, Colorado Springs, and Trinidad, and the small southeastern or Cheyenne corner of Wyoming. The portions of Wisconsin not embraced in zone I were treated as two rate areas, one being the part in Illinois territory, and the other the part that lies north thereof and on and east of a line from Madison to Green Bay and termed extended zone C in Wisconsin. These zones and separately treated portions are sketched on appendix G to the original report in the western trunk-line revision. Carriers later voluntarily projected extended zone C northward along the west bank of Green Bay to embrace Marinette, Wis., and Menominee, Mich.

[35] The original scale, for zone I extended through 1,500 miles (as did those for zones II and III), and the rates therein for representative distances were 5 miles 32 cents, 50 miles 49 cents, 100 miles 68 cents, 200 miles 92 cents, 400 miles 126 cents, 600 miles 158 cents, 1,000 miles 210 cents, and 1,500 miles 270 cents.

[36] In supplemental and second supplemental reports (1931), 173 I. C. C. 637, and 178 I. C. C. 619, respectively.

[37] Sixth supplemental report (1934) in the western trunk-line revision, 202 I. C. C.

1935. No change was made in the rates within the parts of eastern and southeastern Wisconsin previously defined. The plan of the original report for constructing rates was adhered to, but the zone scales were modified mainly by increasing the rate of progression and measure for the relatively longer distances, although many of the rates for the shorter distances in zone I scale were reduced somewhat. Zone differentials were modified accordingly. The approximate average percentage relations to zone I of rate levels in zones II and III were increased to 114 and 125 percent, respectively.[38] Rates in the revised zone I scale for all distance blocks through 1,500 miles average 128.4 percent of the eastern scale, 93.9 percent of the southern scale, and 80.0 percent of the revised southwestern (or zone III scale). No change was made in the zone boundaries, laminated formula for interzone rates, number and percentage relations of the classes, or in the governing classification and exceptions, save that rates within extended zone C in Wisconsin were required to be governed by western classification.

Southern Missouri's earlier class-rate history is recited in *Interstate Rates in Missouri* (1932), 181 I. C. C. 259, at pages 264–266. In that proceeding southern Missouri was denominated zone II, except the strip along the Arkansas border which was named zone III. Pursuant thereto the bases for present interstate rates are those fixed in the western trunk-line revision for zones II and III, respectively. For rates between these zones, as well as between them and northern Missouri (zone I), application of the laminated formula was prescribed. No change was made in the governing (western) classification and exceptions. Rates in compliance with the findings in that proceeding became effective July 17, 1932.

Within southwestern territory.—The rate structure in this territory as it existed in 1927 is described, and a brief history thereof is given, at page 217 and elsewhere in the original report in the southwestern revision (123 I. C. C. 203). In that report, distance rates were prescribed throughout the territory on the southwestern scale,[39] with the addition of differentials, representing 20 percent of the southwestern scale, for any distance in Texas-Oklahoma differential territory.[40] For the crossing of the Mississippi River, the carriers were authorized

[38] The scales of rates in the three zones appear in appendix S.

[39] The original scale in the southwestern revision for the distance rates established July 14, 1928, extended through 1,500 miles. For representative distances the rates were, 5 miles 38 cents; 50 miles 58 cents; 100 miles 79 cents; 200 miles 109 cents; 400 miles 152 cents; 600 miles 192 cents; 1,000 miles 263 cents; and 1,500 miles 318 cents.

[40] Roughly, Texas-Oklahoma differential territory lies generally west of a line in Texas drawn north from Corpus Christi through San Antonio, San Angelo, Midland, Lubbock, and Amarillo, thence northeastward and north so as to include the Panhandle section of Oklahoma west of the 100° meridian.

to add arbitararies of 4 cents at Thebes, Ill., and Memphis, Tenn., and 6 cents at crossings south thereof. As modified prior to the establishment of the rates on July 14, 1928, the percentage relations of the classes to class 100 prescribed were:

Classes	1	2	3	4	A	5	B	C	D	E
Percentages	100	85	70	55	45	40	32½	30	22½	17½

Shortly after the original decision in the western trunk-line revision, the southwestern proceeding was reopened for further hearing in recognition of the differences between the rates that had been prescribed in the original reports in these two revisions, and to integrate the two rate adjustments as much as possible. In supplemental reports in the reopened proceeding, the twenty-first as modified by the twenty-second supplemental report (1934 and 1935), Texas-Oklahoma differential territory was designated as zone IV, and the Southwest[41] as zone III. The scale fixed for zone III was the same as had been provided in the sixth supplemental report in western trunk-line revision for zone III, and, for zone IV, a scale 15 percent higher.[42] Rates between zones III and IV were required to be constructed on the laminated formula.

Addition of arbitraries for Mississippi River crossings was no longer permitted in rates to and from east-bank river points. Houston, Galveston, and Texas City, Tex., were grouped generally as to rates between those cities and points more than 200 miles, later made 150 miles, from Houston by adding 15 miles to the distance to and from Houston.[43]

The percentage relation of class 5 was reduced from 40 percent to 37½ percent of class 100, thus unifying the percentage relations between all classes where the rates are governed by western classification in the southwestern and western trunk-line revisions. Rates in accordance with the modifications described were published effective April 6, 1937, and the class rates which had been established pursuant to the original report, as modified, were canceled.

The reduction from 120 percent to 115 percent in the rate level for Texas-Oklahoma differential territory (later designated zone IV) had been earlier required in the nineteenth supplemental report[44] (1933) in the southwestern revision.

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[41] The Southwest is all of southwestern territory lying east of Texas-Oklahoma differential territory.

[42] Southwestern zone III scale is set forth in appendix 8 to this report. The scale for zone IV is not shown there because the carriers no longer avail themselves of its level above zone III.

[43] Twenty-second and twenty-ninth supplemental reports (1935 and 1943) in the southwestern revision, 211 I. C. C. 573, and 256 I. C. C. 636. The reports cited provide that in instances in which the short-line distances from Houston approximate or exceed the corresponding distances from Galveston the scales shall be applied to the Houston distance.

[44] 196 I. C. C. 507.

Effective August 16, 1941, the carriers voluntarily reduced the rate level in zone IV to the basis of the zone III rate scale, and eliminated the zone IV differentials in the rates between zones III and IV.

Interterritorial rates.—There is no scale that alone determines the class rates between any two of the principal rate territories. As indicated, for the most part key rates have been prescribed; and, where distance scales are used, differentials for the higher-rated territories or zones are added to the underlying rate scale, or the intraterritorial scales are used as rate factors and differentials for the other territory are added. In the circumstances, the setting forth in full of any such scales would serve no useful purpose.

Between official and southern territories.—The early history of these rates generally is set forth in the original report in the southern revision (100 I. C. C. 513) at pages 550 to 566, and in supplemental reports in that revision. As to southern Virginia, North Carolina, Kentucky, and northeastern Tennessee, being the area in southern territory contiguous to official territory, it is further reviewed in reports in the so-called "border cases." [45]

The present adjustment generally consists of joint rates. Rates are on either a key or distance basis, maintained for the most part in accordance with the southern revision, and as to the area [46] bordering on official territory they are made pursuant to the subsequent border cases. Exceptions to the adjustment are the rates between Maine north of the extensive Portland group and southern territory below the border area, which are made on combinations.

Key rates apply to the extent prescribed in the southern revision between selected key points, and other places grouped therewith by the carriers, in trunk-line territory or New England and southern territory (not including the southern border area). We outlined the grouping of southern territory, including the Florida peninsula. The all-rail key rates were designed to reflect the influence of the more economical water transportation afforded by all-ocean or ocean-rail rates, which becomes less and finally disappears as the locations of the points are farther and farther inland.[47] For that reason, part of

[45] *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.* (1935), 213 I. C. C. 259, *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.* (1935), 213 I. C. C. 297, and *East Tennessee Border Traffic Assn.* v. *Akron, C. & Y. Ry. Co.* (1936), 214 I. C. C. 316; and all three proceedings are embraced in the following supplemental reports: 218 I. C. C. 521, 229 I. C. C. 20, and 231 I. C. C. 453.

[46] This border area comprises southern Virginia, being that part of the State lying south of the Norfolk & Western Railway between Norfolk and Bristol, and south of the Virginian Railway between Norfolk and Roanoke; the States of North Carolina and Kentucky; and northeastern Tennessee, which embraces Johnson City, Kingsport, Elizabethton, Bluff City, Watauga, Piney Flats, and Bemberg.

[47] Key rates over ocean-rail routes were prescribed in the southern revision, between a majority of the eastern key points and southern groups, in varying amounts lower than the all-rail key rates.

Tennessee was excluded from the southern territory groups accorded key rates, and was placed on the interterritorial distance basis.

The rates between official and southern territories, except key rates, are on the distance-basis formula prescribed in the southern revision, save that to and from the southern border area the rates are nearly all on the distance formula prescribed in the border cases. The formula combines the intraterritorial rate factors south of the Ohio River gateways for all distances, or south of Virginia gateways for southern points beyond the border area over direct routes, with the appropriate differentials for distances in official territory north of the gateways. Four scales of differentials are used dependent upon the varying distances in southern territory. As the distances in the South lengthen the differentials become relatively less. To and from points in the Florida peninsula the differentials previously described for distances in the peninsula are added.

Rates between official territory and the southern border area, except northeastern Tennessee, are on a distance formula like the one prescribed interterritorially to and from most of southern territory, but the factors south of the Ohio River and Virginia gateways, and the official territory differentials north thereof, are lower, and the distance spreads in the South that determine the use of the particular scale of such differentials are different. To and from the Tennessee points the rates are made by adding an arbitrary of 48 cents to the official territory differentials, with a slight modification in certain instances as to one of the points.

Differentials for distances in zone B in New England similar to those authorized in the eastern revision, are not included in the interterritorial rates between zone B in New England and southern territory. Differentials were authorized to and from points in Michigan, *Southern Class Rate Investigations*, 128 I. C. C. 567, 601, similar to those which are applied in determining first-class rates within central territory, and apparently zone C arbitraries are added in constructing class rates between zone C and southern territory.

Although certain points on the Chesapeake & Ohio Railway in Kentucky, and on the Norfolk & Western Railway in Virginia, are within the boundaries of southern territory, rates between them and official territory are discussed under this title of the report dealing with rates within the latter, because in the eastern revision they were treated with rates in official territory; and they are subject to official classification.

Between official and western trunk-line territories.—Rates, as then in effect, are described in the original report in the western trunk-line revision (164 I. C. C. 1), along with some history, at pages 36–42.

While the rates were mostly combinations of separately published factors, governed by either official or western classification, there were many important exceptions.

The bases prescribed in that original report for all-rail rates to and from the three western trunk-line rate zones previously described consisted of distance rates and key rates, depending upon the location in official territory of a given point respectively east or west of a line extending south across the southeastern corner of Michigan, thence the western boundary of Ohio. Interterritorial rates in both directions were required to be governed by western classification, but classification exceptions were not prescribed. Key rates were fixed in specific amounts, while the distance rates were prescribed according to the laminated formula employed for interzone rates within western trunk-line territory, but using as the underlying through scale the so-called basic scale.[48] The latter applied only in conjunction with the zone differentials. It was the same as the eastern scale through 85 miles, but, beyond, became higher gradually, and for all distance blocks through 1,500 miles was 106.4 percent of the eastern scale; and approximated 84 percent of the scale for western trunk-line zone I.

In order to avoid excessive "humps" in the interterritorial rates to and from points in the eastern portion of zone I, a reasonable grading into the interterritorial rates published on the normal basis was achieved by subjecting them as maxima to rates obtained by adding to the class 100 rates prescribed in the eastern revision east of those gateways a so-called bridge scale of arbitraries for distances through 170 miles. Through rates so arrived at for class 100, to which the lower classes were related by the same percentages as fixed within western trunk-line territory, were also governed by western classification.

Between the eastern and southeastern parts of Wisconsin outside zone I and official Illinois territories the rates were prescribed on either the distance or key-point plan on the same bases as used in the eastern revision to and from the corresponding areas in zone C in Michigan and Illinois, respectively.

A general modification of the interterritorial rates, mostly upward, was required in the sixth supplemental report in the western trunk-line revision, and became effective August 20, 1935, simultaneously with the modified rates within western trunk-line territory. Included were the rates between the western trunk-line zones and the parts of eastern and southeastern Wisconsin previously described, but the rates between these parts of Wisconsin and official-Illinois territories were not altered. No change occurred in the dividing line

[48] The original basic scale extended through 2,200 miles, and the rates (prescribed prior to the general increase of 1938) for representative distances were, 5 miles 30 cents; 50 miles 43 cents; 100 miles 57 cents; 200 miles 78 cents; 400 miles 106 cents; 600 miles 134 cents; 1,000 miles 117 cents; 1,500 miles 228 cents; and 2,200 miles 298 cents.

between the areas in official territory to and from which key and distance rates were provided; but the revised interterritorial rates reflected modifications in the underlying basic scale relatively the same as were effected in the sixth supplemental report respecting the western trunk-line zone scales, as well as from changes in the zone differentials used according to the laminated formula. The revised basic scale to and including 85 miles remained unaltered and the same as the eastern scale, but for greater distances became relatively higher than the latter.[49] The aggregate of the class 100 rates for all distance blocks in the basic scale through 1,500 miles is 112.6 percent of the aggregate of the class 100 rates in eastern scale; and, correspondingly, 87.7 percent of the zone I scale.

Important features of the general revision effective August 20, 1935, were the changes required in the classifications and exceptions governing the interterritorial class rates, which were determined mainly by applying the destination-territory classification. Classification exceptions had not been embraced in the findings in the original report.[50] Rates made by the use of the bridge scale of arbitraries also were affected materially by these changes.

The specific bridge-scale arbitraries published separately between the eastern gateways of zone I and points within 170 miles thereof in that zone, for use in constructing alternate maximum through interterritorial rates, are governed by western classification and exceptions; and the same treatment is accorded points within 170 miles of the western boundary of the Northwest.[51] The rate factor applicable east of the gateway or boundary on a given shipment, to which the arbitrary is added, remains subject to official classification if a class rate. In contrast, the original report had provided such alternate maxima by addition of the class 100 arbitraries to the class 100 rate factors east of the gateways, which total was published in single amounts governed through by western classification; and the lower classes were related thereto by the western percentages.

Between official territory and southern Missouri.—Formerly combination rates based on the Mississippi River applied generally to and from official territory. In consequence of successive readjustments

[49] The revised basic scale extended through 2,400 miles, and the class 100 rates therein for representative distances were, 5 miles 30 cents; 50 miles 43 cents; 100 miles 57 cents; 200 miles 78 cents; 400 miles 109 cents; 600 miles 140 cents; 1,000 miles 191 cents; 1,500 miles 251 cents; and 2,400 miles 359 cents.

[50] The finding as to classification exceptions was rescinded in report on further hearing in *Western Trunk Line Class Rates* (1941), 246 I. C. C. 119.

[51] That boundary is formed by the Northern Pacific Railway from Duluth to Hinckley, Minn., thence the Great Northern Railway to Twin Cities, Minn., thence the Mississippi River to the northern State line of Illinois. The "Northwest" here contemplated embraces Minnesota east of the boundary described, Upper Michigan, and Wisconsin except the portions in extended zone C and Illinois territory. As stated in part I of this report, official classification governs class rates between the Northwest and official territory east of Illinois.

in interterritorial rates applying over routes through Missouri on traffic between official territory and points in Arkansas, Oklahoma, and Kansas, necessitated by compliance with findings in the southwestern and western trunk-line revisions, and of expiration of relief from section 4 of the act which had permitted temporarily the maintenance of higher rates to and from intermediate points in Missouri, the carriers established joint rates between official territory east of Illinois and southern Missouri. They are constructed approximately on the bases employed in the southwestern revision, except that to and from points near the Kansas border and north of Cornell, Kans., the rates conform to the western trunk-line revision. Only a small part of this adjustment was protested upon publication, but was found justified by division 2 in *Class Rates Between Missouri and Official Territory* (1940), 237 I. C. C. 451.

Between official and southwestern territories.—All-rail rates, as they existed in 1927, between so-called "defined territories" and other areas on the one hand, and southwestern territory on the other, are discussed at page 218 and elsewhere in the original report in the southwestern revision (123 I. C. C. 203).

Except Illinois, most of which was then included in western defined territories, official territory consisted of eastern defined territories extending from Illinois through the Buffalo-Pittsburgh line, and trunk-line-New England territories east thereof. The outlines of the defined territories varied greatly, depending upon the parts of southwestern territory to and from which the rates applied. From eastern defined territories to southwestern territory generally rates were made differentially over St. Louis, Mo., while in the opposite direction combinations on southwestern gateways [52] applied. Groups often of large size obtained at both ends in connection with these rates, Texas common-point territory [53] generally having the same destination rates. Wide disparities prevailed between the rates from defined territories. Between trunk-line-New England and southwestern territories rates were generally combinations of flat rates, or flat rates and proportional rates, on southwestern gateways or Chicago, Ill.

The pattern of the rate bases above described to and from the eastern defined territories was followed largely in the bases for interterritorial rates in both directions prescribed in the original report in the southwestern revision, as modified prior to the establishment of rates pursuant thereto. Rate factors were provided between base points in official territory and the southwestern gateways, to which were added the factors fixed between the gateways and extensive groups that

[52] The southwestern gateways are: St. Louis, Cairo, Ill., Memphis, Vicksburg, Miss., and New Orleans, La.

[53] Texas common-point territory comprised all of Texas east of Texas differential territory.

together comprised all of southwestern territory. These groups represented segments of roughly circular bands extending between two lines which were approximately indicated distances from a given gateway. Factors between such groups and gateways were made according to the measure of the rates prescribed in the southwestern revision within and between southwestern and Kansas-Missouri territories. Official territory points, other than those particularly named in the original report in that revision, were required to be either grouped with the base points or established as additional base points with which other points could be grouped, and to be supplied with rates in harmony with those prescribed for the base points named. The official territory rate factors reflected in some degree the differentials for that territory set forth in appendix Q to the original report in the southern revision. Joint rates on the bases prescribed became effective July 14, 1928.

These interterritorial rates were governed by western classification, and the percentage relations between the classes prescribed were the same as stated herein for the rates within southwestern territory resulting from the original report, as modified, in the southwestern revision.

In the twenty-first, as modified by the twenty-second, supplemental report in the southwestern revision, the rate pattern was changed as a result of the reopening of that revision for the purpose of interrelating the adjustment therein with that in the western trunk-line revision. Key rates were prescribed between key points in southwestern territory and key points in official territory, except the parts of Illinois and Indiana south of a line from St. Louis to Cincinnati, Ohio. To and from these excepted parts rates on distance bases were ordered, which were constructed on the laminated formula by using the basic rate scale for the entire distances and adding appropriate mileage differentials for distances within the zones in western trunk-line and southwestern territories.

All these readjusted interterritorial rates were required to be governed by western classification, and the percentage relations fixed between the classes were the same as those in the contemporaneous readjustment of rates within southwestern territory. They became effective April 9, 1937.

The rates described to and from points in zone IV were voluntarily reduced by the carriers on August 16, 1941, in amounts equal to the appropriate zone IV differentials, contemporaneously with like action within southwestern territory.

Between southern and western trunk-line territories.—A brief history of the rates between western trunk-line and southern territories prior to 1930 appears in the original report in the western trunk-line

revision (164 I. C. C. 1) at pages 42 and 43. The rate adjustment existing in 1938 between this western territory, including southern Missouri, and the South is described in the original report in the western-southern revision (226 I. C. C. 497) at pages 501 and 502. With important exceptions, the rates were then generally made by combinations of rate factors, usually on the Ohio and Mississippi River crossings, Virginia cities, or Chicago or other interior points in Illinois. For example, rates between most of Kansas-Missouri territory [54] and the South, which were approved in the original report, as modified, in the southwestern revision, were through one-factor rates, having become effective April 9, 1937.

On June 7, 1939, through one-figure rates were established between western and southern territories on the basis of the full line of key rates prescribed in the western-southern revision. Because the two territories are not closely contiguous over railroad routes, the finer grading afforded by distance scales was not deemed necessary, and no scale was prescribed; but we suggested that carriers themselves provide reasonable grading near the gateways where essential in order to avoid rate bumps.

As in the case of key rates fixed in other proceedings, the initial guides were the amounts produced by the distance method applied according to the laminated formula. The scales of rates and differentials used therefor were the same as prescribed in the other class-rate revisions for the respective territories and zones traversed, the rate level employed for the South being the same as that for western trunk-line zone II.

From western trunk-line territory to the South rates were required to be governed by southern classification, and by western classification in the opposite direction.

Between southern and southwestern territories.—The rate structure in existence in 1927 is outlined in the original report in the southwestern revision as one of the several interterritorial adjustments. Reference thereto has been made in the portion of this report dealing with history of the rates between official and southwestern territories. Explanations there made of a general nature as to the adjustments, particularly those regarding rates from defined territories, are pertinent here. The South was then contained in the southeastern defined territories. Rates from the latter to southwestern territory usually were made differentially over St. Louis, but sometimes over Mississippi River crossings south thereof. East-bound, combinations of rates on that river applied.

[54] Kansas Missouri territory was described in the southwestern revision as comprising all of Kansas, and Missouri south of the Missouri River, except St. Louis and Kansas City.

In the original report, as modified, in the southwestern revision, the method of constructing these interterritorial rates was like that employed for rates to and from official territory, previously described herein, including the same percentage relations between the classes, all governed by western classification. The same groups and rate factors were used between southwestern territory and the gateways of Memphis, Vicksburg, Miss., and New Orleans, La., to which were added the factors named between the gateways and specified base points throughout southern territory, except the Florida peninsula, to and from which no joint rates were provided. Effective July 14, 1928, joint rates in accordance with this outline were established.

The rates described in the next-preceding paragraph were superseded on April 9, 1937, by joint rates prescribed in the twenty-first, as modified by the twenty-second, supplemental report in the southwestern revision. We followed a plan similar to that employed in the same reports respecting rates between southwestern and official territories. Key rates were prescribed between named key points in southwestern territory and in southern territory on and east of an irregular line drawn southwardly through Louisville and Bowling Green, Ky., Nashville, Tenn., Decatur, Birmingham, Montgomery, and Dothan, Ala., and Tallahassee, Fla. To and from points west of that line the carriers were required to compute rates on the distance basis according to the laminated formula, using the same scales of rates and differentials as had been prescribed within southwestern territory, and treating the southern-territory area as on the same rate level as western trunk-line zone II. Western classification continued to govern these interterritorial rates. Percentage relations between the classes were the same as required for the contemporaneous readjustments of rates within southwestern territory. Again no rates were fixed to and from the Florida peninsula.

As in the case of other rates resulting from the southwestern revision, the zone IV differentials were removed on August 16, 1941.

Between western trunk-line and southwestern territories.—The Dakotas, eastern Colorado, and the Cheyenne corner of Wyoming were not within the interterritorial scope of the southwestern revision. They will be discussed apart from the portion of western trunk-line territory affected by that revision, which did include southern Missouri as to interterritorial rates.

Between western trunk-line territory affected by the southwestern revision and southwestern territory the rates in 1927 were on various bases, as described at page 217 and elsewhere in the original report in that revision. The principal bases were: To and from western

defined territories[56] (the affected area north of Kansas-Missouri territory, except the portions of Nebraska and Minnesota outside of defined territories) the rates were extensively grouped and usually constructed differentially over St. Louis, but rates to and from Texas common-point territory[58] (which generally was blanketed under the same rates) were mostly joint rates; to and from the lower Missouri River cities (Kansas City to St. Joseph, Mo., inclusive) specific rates applied that roughly increased with distance, but here common-point territory was divided into two groups of which the Dallas-Fort Worth group comprised northeast Texas; and Texas-Oklahoma differential territory rates were made by adding differentials to the common-point rates. Between southwestern and Kansas-Missouri territories the rates were made generally on certain distance scales that were widely divergent.

To and from the portions of Nebraska and Minnesota not embraced in western defined territories, rates were combinations made over Missouri River cities or other points within those territories, among the most important being the Twin Cities, Minn., and Sioux City, Iowa.

The rates described above (except those covered in the next preceding paragraph), were displaced on July 14, 1928, by rates on bases prescribed in the original report in the southwestern revision, as modified. They were: Between southwestern and Kansas-Missouri territories, rates computed point to point on the original southwestern scale, plus the 20 percent differentials for any distances in Texas-Oklahoma differential territory; and to and from the remainder[57] of affected western trunk-line territory, rates constructed by adding to specified rate factors between the southwestern groups[58] and the gateways of Kansas City or St. Louis the rate factors named between the gateways and base points north thereof. Factors south of the gateways reflected the increments for Texas-Oklahoma differential territory. The aggregated factors were published at joint rates, and were governed by western classification. Percentage relations between the classes were the same as stated in the part herein dealing with rates within the southwestern territory.

[56] Western defined territories embraced southeastern Nebraska and southern and southeastern Minnesota, including the Twin Cities, but not that part of western trunk-line territory north and west thereof.

[57] All of Texas east of Texas differential territory.

[58] This remainder included points on, east, and south of a line commencing at Duluth, Minn., and extending roughly through Hinckley, St. Cloud, and Pipestone, Minn.; Sioux Falls, S. Dak., Sioux City, and Emerson, Oakland, Fremont, Grand Island, and Lester, Nebr., to the Nebraska-Kansas State line over which it continued to the Missouri River, thence to the Mississippi River.

[58] These groups were devised in the original report in the southwestern revision and are described herein in connection with the interterritorial rates between official and southwestern territories.

Although rates to and from the parts of Nebraska and Minnesota outside of western defined territories were also in issue, no bases therefor were prescribed in the original report in the southwestern revision, and carriers did not undertake to establish joint rates coincidently with the rates made effective July 14, 1928. However, they did extend joint rates on July 15, 1932, to and from Nebraska on the original southwestern scale on a point to point basis; and on November 20, 1933, they extended joint rates to and from northern Minnesota, but on bases somewhat higher than that scale, and the points were grouped.

Like other interterritorial rates to and from southwestern territory, the rates from and to affected western trunk-line territory, including all of Nebraska and Minnesota, were changed effective April 9, 1937, to conform to the pattern prescribed in the twenty-first, as modified by the twenty-second, supplemental report in the southwestern revision. Key rates were provided throughout, including the Missouri River cities and St. Louis, but excepting Kansas-Missouri territory. To and from Kansas-Missouri territory, except the Kansas points on the Missouri River, distance rates were required to be constructed according to the laminated formula applied to the scales of rates and differentials prescribed for the respective zones.[59] Such distance rates applied from point to point, except that to and from zone II, for distances greater than 200 miles, the points were grouped and specified rates were required. The latter method was extended to all points beyond 200 miles in zone III of Kansas-Missouri territory on June 7, 1939. Percentage relations fixed between the classes were the same as herein stated for rates within southwestern territory that were established April 9, 1937.

The zone IV differentials were eliminated from these rates on August 16, 1941.

Coming to the part of western trunk-line territory beyond the interterritorial scope of the southwestern revision: Prior to November 20, 1933, combination rates applied between southwestern territory and the Dakotas, made generally over the Twin Cities, Sioux City, or Sioux Falls, S. Dak. On that date the carriers established joint rates to and from grouped points which, as to South Dakota, were made on about the original southwestern scale, but, as to North Dakota, were made somewhat higher than the scale.

Between most Colorado stations on and east of the Colorado common-point line, including Cheyenne, Wyo., and southwestern territory, joint rates were applicable for some years prior to July 1, 1934, the basis for which does not appear. They were then replaced, by action

[59] All zones in these territories were described in the twenty-first supplemental report in the southwestern revision.

of the carriers, by joint rates on approximately the original southwestern scale.

Effective April 9, 1937, to and from the Dakotas, and May 31, 1937, to and from eastern Colorado and Wyoming described above, the rates were changed to reflect bases similar to those that had been prescribed for affected western trunk-line territory in the twenty-first and twenty-second supplemental reports in the southwestern revision.

The rates were governed by western classification. Percentage relations between the classes were made to correspond with the original and modified adjustments in the southwestern revision, respectively. On August 16, 1941, the zone IV differentials were removed from the rates to and from that zone.

DISTRIBUTION OF NATURAL RESOURCES AND ECONOMIC DEVELOPMENT OF THE FIVE PRINCIPAL FREIGHT RATE TERRITORIES

Irrespective of whether freight rates are or have been responsible for differences in the growth and development of the different freight-rate territories, it seems reasonable to assume that both freight rates and the material prosperity of the population of these rate areas have been associated in some degree with the natural resources within their boundaries. We will therefore examine the distribution of the natural resources of the five principal freight-rate territories (official, southern, western trunk-line, southwestern, and mountain-Pacific).

Minerals.—The distribution of available iron ore reserves is shown by the following table:

Iron ore reserves of the United States by freight-rate territories, 1935 (approximate)

Territory	Amount in millions of tons of 2,240 pounds	Percent of United States
Official	147	3.7
Southern	2,120	53.2
Western trunk-line	1,450	36.3
Southwestern	200	5.0
Mountain-Pacific	71	1.8
United States	3,988	100.0

The distribution of copper reserves is shown by the following table:

Reserves of metallic copper, by freight-rate territories, 1936

Territory	Tons	Percent of United States
Official		
Southern	120,000	0.5
Western trunk-line, including Michigan	335,000	1.3
Southwestern		
Mountain-Pacific	24,884,000	98.2
	[1] 25,339,000	100.0

[1] Does not include 800,000 tons of copper in mines whose location is not shown in the table.

The distribution of lead and zinc reserves is shown by the following table:

Lead and zinc reserves, by freight-rate territories, 1936

Territory	Lead	Zinc
	Short tons	*Short tons*
Official	85,000	2,940,000
Southern	90,000	510,000
Western trunk-line	1,606,000	1,516,800
Southwestern	193,360	4,483,200
Mountain Pacific	1,237,158	2,713,580
Total	3,302,158	12,163,580
	Percent of total	*Percent of total*
Official	2.57	24.17
Southern	2.73	4.19
Western trunk-line	51.37	12.47
Southwestern	5.86	36.86
Mountain Pacific	37.47	22.31
Total	100.00	100.00

Reserves of metallic minerals, however, are not confined to the existing ore reserves. The processes of production have built up large reserves of these metals in the various finished products into which they enter. This is particularly true with respect to iron and steel, copper, lead, and to a lesser extent, with respect to zinc.

In 1936, reserves of iron and steel represented in products in use aggregated in excess of 1 billion tons. No estimates of secondary reserves for the other metals are available. For the period 1914 through 1939, however, the average ratio of secondary production to primary production for copper was 58.24 percent; for lead, 41.01 percent; and for zinc from 1914 through 1934, 29.45 percent.

Official territory greatly outranks all other territories in the proportion of semidurable and durable commodities which constitute the more important sources of the secondary metal supply. Depending on whether Michigan and Virginia are excluded or included, official territory is estimated to contain between 60 and 62 percent of the manufacturing establishments, between 44 and 46 percent of the hotel rooms, 59 and 61 percent of the office, trade, and other business structures, 50 and 52 percent of the dwelling units, 48 and 50 percent of the motor vehicles, 56 and 58 percent of the miles of wire in cable, and 64 and 66 percent of the miles of all wire of telephone companies. This territory is somewhat less important relatively in its secondary metal reserves represented by railway plant and equipment, which is one of the most important sources of secondary metal. Although this territory had between 28 and 31 percent of the miles of road, it does not greatly outrank the western trunk-line territory in this respect, although very much above all three of the other rate territories. However, class I railroads of the eastern district, which roughly coincides with official territory, owned between 41 and 46 percent of steam loco-

motives and a majority of the steel or steel underframe passenger-train cars in 1938. These roads also owned more than half of the steel and steel underframe freight-train cars in the Pocahontas region is included with the eastern district, and nearly 47 percent if it is excluded.

The following table shows the value of the products of all mineral industries for 10-year periods 1902 to 1939:

All mineral industries: Value of products by freight-rate territories, 1902–39

Period	Territory										United States	
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific			
	1,000 dollars		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*	
Year 1902	454,223		50,866		128,229		14,609		148,899		796,826	
Year 1909	623,457		72,101		203,351		47,358		262,825		1,209,092	
Year 1919	1,526,902		228,096		394,179		479,702		493,680		3,122,559	
Year 1929	1,385,854		261,221		405,722		1,179,270		1,010,350		4,244,932	
Year 1939	1,074,824		214,126		291,685		897,017		725,238		3,220,929	
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
Year 1902		57.0		6.4		16.1		1.8		18.7		100.0
Year 1909	37.3	51.6	41.7	6.0	58.6	16.8	224.2	3.9	76.5	21.7	51.7	100.0
Year 1919	144.9	48.9	216.4	7.3	93.8	12.6	912.9	15.4	87.8	15.8	158.3	100.0
Year 1929	[1] 9.2	32.6	14.5	6.1	2.9	9.6	145.8	27.8	104.7	23.8	35.9	100.0
Year 1939	[1] 22.4	33.4	[1] 18.0	6.6	[1] 28.1	9.1	[1] 23.9	27.6	[1] 28.2	22.5	[1] 24.1	100.0

[1] Decrease.

Energy.—The term "energy resources" as ordinarily used refers to water power, a replenishable source of energy, and to the minerals from which energy is usually derived, coal, petroleum, and natural gas, or presumably nonreplenishable sources.

The decline in the coal industry in recent years (prior to World War II) has been due in part to the extensive substitution of other forms of energy generation for coal, but also to the amazing strides that have been made in increasing the efficiency of coal utilization. Coal has been losing ground relatively since the early part of this century, though the actual quantities mined continued to increase until 1918. At the peak of consumption which occurred in that year (under the stimulus of World War I) coal supplied 82 percent of the total energy derived from minerals and water power. By 1929 the proportion was down to 63 percent, and by 1937, to 54 percent. Since 1923 and until World War II the industry had been in a state of almost continuous depression. Despite this fact, coal remains the principal energy source, petroleum, natural gas, and water power following in the order named.

In 1937 the Bureau of Mines placed the supply of energy derived from coal at 12,977 trillion b. t. u. as against 7,666 trillion from domestic petroleum and 2,526 trillion for natural gas, or a total of 10,357 trillion for the latter two. It is apparent, therefore, that in this fairly active industrial year, energy derived from coal exceeded the combined total from petroleum and natural gas by substantially 2,500 trillion units or more than 25 percent. So far as reserves are concerned, coal represents practically 99 percent of the total heat value of the nonreplenishable mineral sources of energy.

Water power represents only a small fraction of the total energy supply. The Bureau of Mines estimates that our total use of energy in 1937 was equivalent to 24,183 trillion b. t. u.; water power, included in terms of prevailing use of fuels in generating power at central electric stations, is estimated to have supplied 849 trillion, or 3.51 percent of the total.

For the nonreplenishable energy resources, coal, oil, and gas, estimates of the total reserves have frequently been made and the data are in such form that approximate geographical distributions of these reserves can be made by freight rate territories. Because of the location of the fields, all of the Virginia reserves have been included in southern territory, although more than half of the area of that State lies in official territory. The total production of Colorado has been included in mountain-Pacific territory. The distribution of coal reserves as of January 1, 1937, is shown by the following table:

Distribution of reserves of coal, by freight-rate territories, Jan. 1, 1937

Territory	Bituminous and semibituminous	Subbituminous	Lignite	Anthracite
	Quantity (tons of 2,000 pounds)			
Official	602, 389, 369, 000			14, 589, 460, 000
Southern	235, 092, 383, 000			488, 976, 000
Western trunk-line	142, 027, 579, 000		600, 965, 153, 000	
Southwestern	64, 033, 017, 000		23, 018, 747, 000	222, 695, 000
Mountain-Pacific	364, 265, 943, 000	818, 083, 894, 000	315, 473, 443, 000	114, 471, 000
United States	1, 407, 808, 291, 000	818, 083, 894, 000	939, 457, 443, 000	15, 415, 602, 000
	Percent distribution			
Official	43.79			94.64
Southern	16.70			3.17
Western trunk-line	10.09		63.97	
Southwestern	4.55		2.45	1.45
Mountain-Pacific	25.87	100.00	33.58	.74
United States	100.00	100.00	100.00	100.00

The foregoing table shows very clearly the heavy preponderance of the total reserves of bituminous and semibituminous coal in official territory, this area possessing between 40 and 45 percent of the total for the United States or approximately as much as southern and

mountain-Pacific territories combined. Also, official territory possesses a practical monoply of the anthracite reserves.

The following table contains estimates of petroleum reserves for selected years by freight-rate territories:

Selected estimates of proven reserves of petroleum, 1925–39

Territory	1925	1934	1935	1937	1938	1939
	Thousands of barrels of 42 gallons					
Official	393,500	415,000	601,000	531,241	432,471	583,403
Southern	78,974	30,000	50,000	38,846	38,266	37,545
Western trunk-line	314,501	194,000	390,000	390,000	607,017	613,230
Southwestern	2,027,153	6,894,000	8,494,000	10,470,915	12,222,422	11,838,636
Mountain-Pacific	2,507,299	5,825,500	4,097,000	4,225,188	4,450,663	4,275,332
Total	5,321,427	13,358,500	13,632,000	15,856,190	17,750,839	17,348,146
	Percent of United States totals					
Official	7.4	3.1	4.4	3.4	2.4	3.4
Southern	1.5	.2	.4	.2	.2	.2
Western trunk-line	5.9	1.5	2.9	3.7	3.4	3.6
Southwestern	38.1	51.6	62.3	66.0	68.9	68.2
Mountain-Pacific	47.1	43.6	30.0	26.7	25.1	24.7
Total	100.0	100.0	100.0	100.0	100.0	100.0

Outside southwestern and mountain-Pacific territories the petroleum reserves are relatively small. Southwestern territory, with 68 percent of the total in 1939, is outstanding in its possession of proven petroleum reserves, and this territory together with the mountain-Pacific territory had 92.9 percent of the total, in 1939. None of the foregoing estimates include any allowances for oil production from oil shales or from coal.

Approximately one-half of the natural-gas reserves of the United States shows practically the same geographical distribution as the petroleum reserves. This is because approximately one-half of the natural gas is produced with oil, the gas being the soure of energy which brings the oil to the surface. Natural gas, however, is also found in many areas which do not produce petroleum, and larger volumes of gas are also being found with petroleum oil discovered and produced from progressively greater depths. The approximate distribution of natural gas reserves by freight-rate territories is as follows:

Territory	Trillion cubic feet
Official	6
Southern	3
Western trunk-line	11
Southwestern	41
Mountain-Pacific	39
	100

The distribution of total energy of mineral fuel resources is shown by the following table:

Distribution of total energy of mineral fuel resources by freight-rate territories, Jan. 1, 1937 (in trillions of B. t. u.)

Territory	All coal	Petroleum	Natural gas	All minerals	
				Total	Percent of United States
Official	16,136,942	3,187	6,450	16,146,579	25.1
Southern	6,171,296	233	3,225	6,174,754	9.6
Western trunk-line	11,422,143	3,540	11,825	11,437,508	17.8
Southwestern	1,978,046	62,825	44,075	2,084,946	3.2
Mountain-Pacific	28,451,354	25,351	41,925	28,518,630	44.3
United States	64,159,781	95,136	107,500	64,362,417	100.00

The following table shows the water-power resources both actual and potential:

Water-power resources and energy production, by freight-rate territories

Territory	Potential water power, 1936 [1]		Capacity of installed water wheels 1937 [2]	Production of electric energy, 1937 [3]		
	Available 90 percent of the time	Available 50 percent of the time		Hydro	Fuel	Total
	Horsepower, thousands			Thousands of kilowatt-hours		
Official [4]	7,686	10,741	5,966	15,283,709	56,757,208	72,040,917
Southern [5]	4,328	6,094	3,888	8,261,194	3,370,746	11,637,940
Western trunk-line [6]	1,466	2,391	1,356	2,843,981	7,602,062	10,446,043
Southwestern [7]	764	967	149	261,215	6,126,569	6,387,784
Mountain-Pacific [8]	28,509	36,991	5,761	17,051,901	3,485,045	20,536,946
Total	42,753	57,184	17,120	43,702,000	77,347,630	121,049,630
	Percent of United States totals					
Official [4]	17.98	18.78	34.85	34.97	73.38	59.51
Southern [5]	10.12	10.66	22.71	18.90	4.37	9.61
Western trunk-line [6]	3.43	4.18	7.92	6.51	9.83	8.63
Southwestern [7]	1.79	1.69	.87	.60	7.92	5.28
Mountain-Pacific [8]	66.68	64.69	33.65	39.02	4.50	16.97
Total	100.00	100.00	100.00	100.00	100.00	100.00

[1] Potential water power in the United States, U. S. Department of the Interior (mimeographed), Aug. 20, 1936.
[2] U. S. Department of the Interior, Geological Survey. For plants having 100 horsepower or more.
[3] Federal Power Commission, Electric Power Statistics, 1937. Production for strictly private use not included, but electric railways, electrified sections of steam railways, and miscellaneous Federal and other plants serving Government or public are included.
[4] Including Michigan and Virginia and excluding Wisconsin. The exclusion of the highly industrialized eastern portion of Wisconsin from official territory somewhat underestimates the importance of this territory.
[5] Excluding Virginia and Louisiana.
[6] Including Wisconsin and excluding Colorado.
[7] Including Louisiana.
[8] Including Colorado.

Mountain-Pacific and official territories are outstanding in the production of hydro electric energy and also in the horsepower of installed

water wheels. Together they account for over 70 percent of the hydroelectric energy and around two-thirds of the capacity of installed water wheels. Southern territory ranks third in hydroelectric production and capacity of installed water wheels.

Agriculture.—The following table shows the gross farm income from crops and livestock in 1939:

Gross farm income from crops and livestock, by freight-rate territories, 1939

Territory	Crops	Livestock and livestock products	Total
	1,000 dollars		
Official	945,954	1,814,350	2,760,304
Southern	933,632	574,475	1,508,107
Western trunk-line	615,896	1,762,524	2,378,420
Southwestern	510,388	513,965	1,024,353
Mountain-Pacific	656,395	634,306	1,290,701
United States	3,662,265	5,299,620	8,961,885
	Percent of territory totals		
Official	[illegible].27	65.73	100.00
Southern	61.91	38.09	100.00
Western trunk-line	25.90	74.10	100.00
Southwestern	49.83	50.17	100.00
Mountain-Pacific	50.86	49.14	100.00
United States	40.86	59.14	100.00
	Percent of United States totals		
Official	25.83	34.23	30.80
Southern	25.49	10.84	16.83
Western trunk-line	16.82	33.26	26.54
Southwestern	13.94	9.70	11.43
Mountain-Pacific	17.92	11.97	14.40
	100.00	100.00	100.00

The highly industrialized character of official territory should not obscure the fact that it is at the same time an important agricultural area. For example, in 1939 the gross farm income of the United States aggregated 8.96 billion dollars, of which official territory produced 2.76 billion, or approximately 31 percent. Western trunk-line territory was a close second, accounting for 2.38 billion, or approximately 27 percent of the total, and was followed by the southern, mountain-Pacific, and southwestern rate areas in the order named. No one of these last three areas, however, produced as much as 17 percent of the United States total.

Agricultural resources as measured by the quality of the land is shown by a grading of all the land of the United States according to its productivity for crop production. The method used attempts to take into consideration all the principal physiographical conditions

influencing productivity such as soil type, topography, rainfall, and temperature.

Land area classified according to its productivity,[1] by freight-rate territories, 1934

[Percent of United States totals (1,000 acres)]

Grade	Territory					United States total
	Official	Southern	Western trunk-line	Southwestern	Mountain-Pacific	
Grouping A[2]						
Excellent	27.13	2.65	63.78	5.97	0.47	100.00
Good	25.37	10.61	41.91	20.47	1.64	100.00
Fair	20.64	21.50	23.68	25.10	9.08	100.00
Excellent to fair	23.15	15.12	35.68	20.68	5.37	100.00
Poor	18.24	21.23	18.91	17.79	23.83	100.00
Incapable of tillage	6.24	6.99	6.69	8.47	71.61	100.00
All grades	14.38	12.51	19.05	14.47	39.59	100.00
Grouping B[2]						
Excellent	24.90	3.93	66.00	4.70	.47	100.00
Good	19.39	13.75	46.30	19.06	1.50	100.00
Fair	16.40	26.31	27.27	22.98	7.04	100.00
Excellent to fair	18.67	18.85	39.32	18.91	4.25	100.00
Poor	14.23	26.68	24.69	14.36	20.04	100.00
Incapable of tillage	4.13	8.17	13.33	7.90	66.47	100.00
All grades	11.08	15.39	24.48	12.94	36.11	100.00

[1] Graded according to ability to produce without irrigation, or without additional drainage.
[2] The variation between grouping A and grouping B is due to a difference in the allocation of States divided by freight-rate territory boundaries as follows:

State	*Grouping A*	*Grouping B*
Michigan	Official	Western trunk-line.
Wisconsin	Western trunk-line	Western trunk-line.
Virginia	Official	Southern.
Louisiana	Southwestern	Southern.
Colorado	Mountain-Pacific	Western trunk-line.

The total land area and its uses in agriculture is shown by the following table:

Land area, by uses and freight-rate territories,[1] 1940

[Percent of United States totals (acres)]

Item	Territory					United States total
	Official	Southern	Western trunk-line	Southwestern	Mountain-Pacific	
Cropland in farms	19.76	14.30	40.18	15.32	10.44	100.00
Plowable pasture in farms	21.20	15.77	34.39	15.53	13.11	100.00
Potential cropland	20.11	14.67	38.75	15.37	11.10	100.00
Other land in farms	10.69	12.98	21.04	22.22	33.07	100.00
Total land in farms	18.40	13.82	29.90	18.79	22.09	100.00
Other land	11.16	12.54	9.56	8.45	58.29	100.00
Total land area[2]	13.52	13.25	20.89	14.22	38.12	100.00

[1] Data for States divided by freight-rate territories were apportioned on the basis of county figures as shown in the Census reports of 1930. At the time this table was prepared, county figures were not released for the Census of 1940.
[2] Total land area as of 1930.

The total land in farms shown in the foregoing table does not represent all the land devoted to agricultural uses because there is an enormous proportion of the total land area of the United States outside of land in farms which is used for pasture. This acreage aggregates 31 percent of the total land area of the United States and is located for the most part, as of 1930, in the three western freight-rate territories, more particularly in the mountain-Pacific territory. The acreages of these pasture lands for the western freight-rate territories, as of 1930, are as follows

Territory	Pasture not in farms (1,000 acres)	Land area (1,000 acres)	Percent of land area
Western trunk-line	15,637	397,619	3.93
Southwestern	56,427	270,528	20.86
Mountain-Pacific	358,530	728,480	49.42
Total	430,594	1,393,627	30.90

The following table shows the production of livestock, poultry, and related products on farms:

Livestock and poultry—production on farms, by freight-rate territories, 1939

[Percent of United States totals]

Item	Territory					United States total
	Official	Southern	Western trunk-line	Southwestern	Mountain-Pacific	
Cattle and calves	21.83	8.04	39.51	15.54	15.08	100.00
Sheep and lambs	14.99	4.75	25.17	10.69	44.40	100.00
Hogs	29.35	12.62	46.92	7.85	3.26	100.00
Milk and milk products	36.18	9.62	35.76	7.87	10.37	100.00
Wool	12.56	2.39	15.35	21.30	48.40	100.00
Mohair			1.06	85.31	13.63	100.00
Chickens	34.99	17.47	29.71	10.65	7.18	100.00
Chicken eggs	37.87	11.93	29.99	10.27	9.94	100.00
Turkeys	20.08	6.45	33.54	17.03	22.90	100.00

The following table shows the value of all farm products by freight-rate territories at 10-year periods 1899 to 1939, with the percents of increase and the percents of the United States totals:

Value of all farm products by freight-rate territories, 1899–1939

Period	Territory										United States	
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific			
	1,000 dollars		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*	
Year 1899	1,304,671		685,523		1,087,918		402,137		261,883		3,742,129	
Year 1909	2,021,388		1,158,725		2,148,291		683,340		495,259		6,508,000	
Year 1919	4,760,839		3,159,729		5,342,134		2,194,303		1,539,921		16,996,926	
Year 1929	3,161,325		2,117,559		3,569,744		1,465,208		1,605,119		11,923,801	
Year 1939	2,657,625		1,622,740		2,464,479		1,068,602		1,307,164		9,120,610	
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total
	Percent	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*	*Percent*
Year 1899		34.9		18.3		29.1		10.7		7.0		100.0
Year 1909	54.9	31.1	69.2	17.8	97.5	33.0	69.9	10.5	89.1	7.6	73.9	100.0
Year 1919	135.5	28.0	172.5	18.6	148.7	31.4	221.1	12.9	210.9	9.1	161.[illegible]	[illegible].0
Year 1929	[1] 33.6	26.5	[1] 33.0	17.8	[1] 33.2	29.9	[1] 33.2	12.3	4.2	13.5	[1] 29.[illegible]	[illegible].0
Year 1939	[1] 15.9	29.2	[1] 23.4	17.8	[1] 31.0	27.0	[1] 27.1	11.7	[1] 18.6	14.3	[1] 23.5	[illegible]0

[1] Decrease.

Timber.—The distribution of forest resources between freight rate territories is shown by numerous tables, the most significant of which is the following:

Stand of saw timber on commercial forest land by character of growth and by freight-rate territories, 1938

[Percent of United States totals (million board feet)]

Materials	Territory					United States total
	Official	Southern	Western trunk line	Southwestern	Mountain-Pacific	
GROUPING A [1]						
Softwoods:						
Old growth	2.54	3.30	0.59	1.16	92.41	100.00
Second growth	9.92	32.07	2.37	12.72	42.92	100.00
Total softwoods	4.20	9.79	.99	3.78	81.24	100.00
Hardwoods:						
Old growth	28.24	40.70	6.90	24.16		100.00
Second growth	36.95	32.83	9.16	17.96	3.10	100.00
Total hardwoods	33.38	36.09	8.23	20.50	1.83	100.00
Total saw timber	8.68	13.82	2.10	6.34	69.06	100.00
GROUPING B [1]						
Softwoods:						
Old growth	1.71	3.90	1.20	0.78	92.41	100.00
Second growth	6.68	38.25	3.11	9.04	42.92	100.00
Total softwoods	2.83	11.65	1.63	2.65	81.24	100.00
Hardwoods:						
Old growth	12.46	36.93	19.00	11.61		100.00
Second growth	29.03	44.61	12.63	10.63	3.10	100.00
Total hardwoods	22.23	49.66	15.25	11.03	1.83	100.00
Total saw timber	5.81	17.48	3.72	3.93	69.06	100.00

[1] The variation between Grouping A and B is due to a difference in the allocation of States divided by freight-rate territory boundaries as follows:

State	Grouping A	Grouping B
Michigan	Official	Western trunk line.
Wisconsin	Western trunk line	Western trunk line.
Virginia	Official	Southern.
Louisiana	Southwestern	Southern.
Colorado	Mountain-Pacific	Mountain-Pacific.

Manufacturing.—The economic development of the United States by freight-rate territories is indicated by the following table showing the value of products of all manufacturing industries.

All manufacturing industries: Value of products by freight rate territories, 1899–1939

[For all establishments, including hand and neighborhood industries, having products valued at $500 or more in year 1899. For all establishments, excluding hand and neighborhood industries, having products valued at $500 or more in 1909, and $5,000 or more in later years]

Period	Territory										United States
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific		
	1,000 dollars		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*
Year 1899	9,725,550		812,700		1,613,949		298,771		550,789		13,000,149
Year 1909	14,988,970		1,455,927		2,524,248		625,443		1,077,464		20,672,052
Year 1919	44,508,154		4,517,728		7,309,672		2,277,861		3,804,664		62,418,079
Year 1929	49,135,105		5,413,010		7,840,136		2,802,092		5,244,520		70,434,863
Year 1939	38,580,160		5,685,323		5,641,327		2,567,821		4,368,394		56,843,025
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total
	Per cent	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*	*Per cent*
Year 1899	------	74.8	------	6.3	------	12.4	------	2.3	------	4.2	------	100.0
Year 1909	54.1	72.5	79.1	7.1	56.4	12.2	110.7	3.0	95.6	5.2	59.0	100.0
Year 1919	196.9	71.3	210.3	7.2	189.6	11.7	264.2	3.7	253.1	6.1	201.9	100.0
Year 1929	10.4	69.8	19.8	7.7	7.3	11.1	23.0	4.0	37.8	7.4	12.8	100.0
Year 1939	[1] 21.5	67.8	5.0	10.0	[1] 28.0	9.9	[1] 8.4	4.5	[1] 16.1	7.8	[1] 19.3	100.0

[1] Decrease.

The following table shows the value added by manufacture of all manufacturing industries:

All manufacturing industries: Value added by manufacture, by freight-rate territories, 1899–1939

[For all establishments, including hand and neighborhood industries, having products valued at $500 or more in year 1899. For all establishments, excluding hand and neighborhood industries, having products valued at $500 or more in 1909 and $5,000 or more in later years]

Period	Territory										United States
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific		
	1,000 dollars		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*		*1,000 dollars*
Year 1899	4,346,034		364,490		603,518		116,728		225,754		5,656,521
Year 1909	6,331,947		662,871		855,546		243,312		435,585		8,529,261
Year 1919	18,701,077		1,880,300		2,229,401		729,867		1,501,053		25,041,698
Year 1929	23,235,038		2,587,614		2,942,164		950,462		2,170,606		31,885,284
Year 1939	17,616,297		2,325,207		2,140,544		823,700		1,777,370		24,682,918
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total
	Pct.	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*	*Pct.*
Year 1899	------	76.8	------	6.4	------	10.7	------	2.1	------	4.0	------	100.0
Year 1909	45.7	74.2	81.9	7.8	41.8	10.0	108.4	2.9	92.9	5.1	50.8	100.0
Year 1919	195.3	74.7	183.7	7.5	160.6	8.9	200.0	2.9	244.6	6.0	193.6	100.0
Year 1929	24.2	72.9	37.6	8.1	32.0	9.2	30.2	3.0	44.6	6.8	27.3	100.0
Year 1939	[1] 24.2	71.4	[1] 10.1	9.4	[1] 27.3	8.7	[1] 13.3	3.3	[1] 18.1	7.2	[1] 22.6	100.0

[1] Decrease.

Population and gainful workers.—The economic development of the freight-rate territories is further shown by the following tables showing total population and the total gainful workers:

Total population of the United States by freight-rate territories, 1900–1940

Period	Territory												United States
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific				
Year 1900	37,573,531		15,380,940		12,966,165		6,532,290		3,551,649				75,994,575
Year 1910	44,335,190		17,554,940		14,770,805		8,784,534		6,026,797				91,972,266
Year 1920	52,079,465		19,309,643		16,115,945		10,242,224		7,963,343				105,710,620
Year 1930	60,871,250		21,594,823		17,271,712		12,176,830		10,860,431				122,775,046
Year 1940	64,118,346		23,948,562		17,777,873		13,084,525		12,759,969				131,689,275
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	
	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	
Year 1900		49.4		20.2		17.1		8.6		4.7			100.0
Year 1910	19.3	48.7	14.1	19.1	14.0	16.1	34.5	9.5	69.7	6.6	26.0	100.0	
Year 1920	16.2	49.3	10.0	18.3	9.1	15.2	16.6	9.7	32.1	7.5	14.9	100.0	
Year 1930	16.9	49.6	11.8	17.6	7.2	14.1	18.9	9.9	36.4	8.8	16.1	100.0	
Year 1940	5.3	48.7	10.9	18.2	2.9	13.5	7.3	9.9	17.5	9.7	7.2	100.0	

Total gainful workers of the United States by freight-rate territories, 1900–1930

Period	Territory												United States
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific				
Year 1900	14,718,464		5,904,622		4,643,977		2,321,326		1,484,844				29,073,233
Year 1910	18,722,588		7,553,942		5,680,179		3,507,081		2,703,546				38,167,336
Year 1920	21,416,753		7,228,998		5,960,002		3,716,248		3,302,247				41,614,248
Year 1930	24,982,861		8,206,697		6,585,165		4,518,232		4,566,965				48,859,920
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	
	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	
Year 1900		50.6		20.3		16.0		8.0		5.1			100.0
Year 1910	27.2	49.0	27.9	19.8	22.3	14.9	51.1	9.2	82.1	7.1	31.3	100.0	
Year 1920	14.4	51.5	[1] 4.3	17.4	4.8	14.3	6.0	8.9	22.1	7.9	9.0	100.0	
Year 1930	16.5	51.1	13.5	16.8	10.7	13.5	21.6	9.3	38.3	9.3	17.3	100.0	

[1] Decrease.

Railway mileage.—The following table shows the distribution of railway mileage between the freight-rate territories:

Railway mileage of the United States by freight-rate territories, 1900–1940

Year ended Dec. 31—	Territory										United States	
	Official		Southern		Western trunk line		Southwestern		Mountain-Pacific			
	Miles		Miles		Miles		Miles		Miles		Miles	
1900	66,687		32,722		54,106		18,221		21,610		193,346	
1910	72,755		41,472		62,736		31,121		32,355		240,439	
1920	78,387		44,333		65,254		32,972		36,899		252,845	
1930	71,581		43,246		63,660		33,227		37,238		249,052	
1940	67,022		40,126		59,484		31,497		35,541		233,670	
	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total	Increase	United States total
	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent	Per cent
1900		34.5		16.9		28.0		9.4		11.2		100.0
1910	9.1	30.3	26.7	17.2	16.0	26.1	70.8	12.9	49.7	13.5	24.4	100.0
1920	.9	29.0	6.9	17.5	4.0	25.8	5.9	13.1	14.0	14.6	5.2	100.0
1930	[1] 2.3	28.8	[1] 2.5	17.4	[1] 2.4	25.6	.8	13.3	.9	14.9	[1] 1.5	100.0
1940	[1] 6.5	28.7	[1] 7.2	17.2	[1] 6.6	25.4	[1] 5.2	13.5	[1] 4.6	15.2	[1] 6.2	100.0

[1] Decrease.

DEPARTURES FROM MAXIMUM INTERSTATE LEVELS OF CLASS RATES SUBJECT TO CLASSIFICATIONS

The freedom with which traffic moves on the full measure of the rates in issue, i. e., class rates subject to ratings in the major classifications, is one of the matters to be considered in the determination of their lawfulness. The record does not disclose the tonnages transported under such rates, but it does indicate that the number of carloads so moving between all points in the United States represents only 4.1 percent of the total, and produces 6.3 percent of the total carload revenue. Of the respective territorial carload totals, the percentage in official territory exceeds somewhat, and in others is lower than the national average.

Aside from the weight to be accorded those results, it is clear from the record that for a long time the proportions of all traffic that have been moving under rates of the kind in issue have been steadily diminishing. In order to meet motor-truck competition, the railroads have published more and more exceptions providing ratings lower than those in the classifications, including exceptions on less-than-carloads and less-than-carload mixtures of long lists of articles; and have established class rates that are below, often greatly below, the interstate maximum bases prescribed. This has been particularly true of intrastate rates in a number of States, which rates the railroads were required by the State commissions to establish, or had published for competitive reasons on bases that State commissions had ordered for motor carriers.

Exceptions to the classification.—In discussing generally the matter of reduced ratings by exceptions applicable on interstate traffic it is

shown in part I of this report that many exceptions are published in every territory embraced in Docket No. 28300, and in some, especially in southern, more extensively than in others. Exceptions are published also interterritorially. Those that have broad application throughout a given territory or between territories are issued by tariff publishing agents acting for many railroads, and authorize the charges on the principal movement of the traffic that is subject to exceptions. There are also exceptions of less extensive application that are published by individual railroads.

Exception ratings cover hundreds of articles of which there is an appreciable movement. They are for the most part lower than the ratings that would otherwise apply on the same articles in the classification, not only in carloads but also in less-than-carloads. For example, substantially throughout western trunk-line and southwestern territories exception ratings are available on straight or mixed less-than-carload lots of important specified articles.[*]

In instances where the actual exception ratings referred to in the next-preceding paragraph are the same as, or higher than, the corresponding classification ratings they are, nevertheless, generally more favorable to the shipper from the standpoint of packaging, mixing, or otherwise. The ratings on particular articles are restricted sometimes by special provisions, as, for example, that they apply or do not apply on intrastate traffic in the States specified.

Exception ratings are applicable in many instances in other territories and interterritorially on various articles, individually and mixed, falling within groupings similar to those indicated.

Another type of exceptions provides column ratings designated 1, 2, 3, and 4, and by certain numerals ranging from 110 to 27½, which are published in a tariff that states it contains rates on "Commodi-

[*] Of such individual articles, which also may be mixed with others in the respective groups, the following groupings may be mentioned: Agricultural implements, rated in exceptions class 70, whereas in western classification the ratings range from classes 70 to 150; confectionery, exceptions class 37, classification classes 70 to 100; drugs, medicines, chemicals, and toilet preparations, exceptions class 70 on small quantities, and classes 68, 65, and 55 on minima of 5,000, 10,000, and 15,000 pounds, respectively, classification classes 55 to 200; named articles of furniture, and of games and toys, variously rated in exceptions ranging down to one-half of the ratings in the classification; groceries and grocery or general-store supplies, exceptions usually class 55, classification classes 55 to 100 but mostly classes 55 and 70; hardware and hardware-store supplies, with which may be included automobile parts, exceptions class 70 on small quantities, and classes 66 and 63 on minima of 5,000 and 10,000 pounds, respectively, classification classes 55 to 150 and on one article class 200; automobile parts, exceptions class 70 (in southwestern territory also classes 66 and 63 on minima of 5,000 and 10,000 pounds, respectively) classification classes 50 to 100 and on a few articles to class 200; iron and steel articles, exceptions class 50, classification classes 55 to 100; and paper and paper articles, exceptions class 55 on small quantities, and classes 50, 47, and 37½ on minima of 7,000, 10,000, and 15,000 pounds, respectively, classification classes 55 to 85 and on one article class 100. The class 37½ rating named in connection with the last-mentioned group is the same rating as published in western classification on many kinds of paper and paper articles, in carloads, minimum 30,000 pounds.

ties, L. C. L." Those ratings, embraced in some 40 items covering several hundred individual articles of wide variety,[61] apply between certain important points and stations in northwestern territory extending from Lake Michigan to the western part of North Dakota. The tariff is governed also by less-than-carload ratings in western classification, over which the exception ratings in the tariff take precedence. In effect, the ratings in that tariff on "columns" 1, 2, 3, and 4 are purely regular classes so numbered, and other numeral ratings merely represent the percentages of column or class 1. These exception ratings are from one to several classes below the less-than-carload ratings in western classification on the same articles, on some amounting to less than one-half of the classification ratings, figured in percentage relations to class 1. The ratings, originally published in order to meet motortruck competition, were successively noted to expire at the end of each following year, but a few years ago the expiration date was eliminated.

Intrastate class rates.—It appears that such rates between points in the States or parts of States embraced in official territory are the same as the interstate rates previously described herein, with only a few variations.[62]

Except in Kentucky and the Florida peninsula, the intrastate class rates within every State or portion of a State comprising southern territory seem to be the same as the corresponding interstate rates. Kentucky intrastate rates are governed by official classification and are on the eastern scale, except that for distances exceeding 150 miles the rates are progressively higher than that scale, the differences on class 100 being 3 cents at 200 miles, 5 cents at 300 miles, and 12 cents at 400 miles.[63] Departures from this higher basis occur in rates between points on the Chesapeake & Ohio Railway, between all points on the Ohio River, and between such railway and river points, which are on the eastern scale. The average of the rates through 300 miles in the scale progressed as described is 101.3 percent of the eastern scale.

In the Florida peninsula the Florida arbitraries no longer are included in intrastate rates on classes 1 to 7 (classes 100 to 35). They

[61] The variety of articles is indicated by the following: Agricultural implements, bags and bagging, bakery goods, building woodwork, canned goods, cotton clothing, drugs and medicines, cottonpiece goods, electrical appliances, automobile engines, food preparations, furniture, groceries, hardware, iron and steel articles, paints, paper articles, petroleum and products, stoves and ranges, surgical supplies, manufactured tobacco, typewriters, and wheels for farm tractors.

[62] For instance, in New Jersey the variations are due to a different grouping of certain points under the intrastate rates from that under interstate rates, found not in violation of section 13 of the act in *Intrastate Class Rates in New Jersey* (1934), 203 I. C. C. 387.

[63] The Kentucky intrastate class rates were found not shown to be in violation of section 13 of the act in *Intrastate Class and Commodity Rates in Kentucky* (1937), 223 I. C. C. 109.

were eliminated by the railroads after the Florida commission had allowed their removal from motortruck rates:

States throughout western trunk-line and southwestern territories have scales of intrastate class rates, either prescribed by State commissions or published to meet motortruck competition, that are lower than the interstate maximum bases. Such rates have the benefit generally of the many exception ratings heretofore discussed; and those on less-than-carload traffic usually include pick-up and delivery services, or allowances to shippers in lieu thereof, to the same extent as under the corresponding interstate rates. A review of these intrastate rates follows:

Wisconsin, lying mostly in western trunk-line zone I,[64] has a 440-mile scale in which the rates are the same as the eastern scale through 150 miles, but beyond that distance they progress more rapidly than the eastern and finally grade into the zone I scale. Class 100 rates for these greater distances under the Wisconsin, eastern, and zone I scales, respectively, are: For 150 miles, 73, 73, and 86 cents; for 200 miles, 84, 80, and 97 cents; for 300 miles, 106, 96, and 117 cents; and for 400 miles, 128, 109, and 136 cents. All Wisconsin intrastate rates are governed by official classification, whereas zone I rates are subject to the western. Hauls in Wisconsin average less than 150 miles, which includes about 75 percent of the class-rate traffic. On most of the remainder the hauls are less than 200 miles, so that the intrastate traffic moves under virtually the official territory level of rates and classification. Rates still lower than those in the State scale described are available on less-than-carload traffic within Wisconsin for distances through 65 miles, which on class 100 range lower than the eastern scale by 8 cents at 5 miles to 1 cent at 65 miles. Wisconsin's less-than-carload scale, as a whole, averages about 103 percent of the eastern scale.

Intrastate rates in Iowa, which is entirely in zone I, have never been on the zone I level. They are on class 100 somewhat higher than the Wisconsin scale through 70 miles, and the same as that scale for greater distances, but are governed by western classification. The percentage on class 4 is 50, whereas it is 55 interstate. Through 500 miles, the extent of Iowa's scale, the class 100 rates average 108 percent of the eastern scale. For hauls of average length the Iowa rates are approximately the same as the eastern scale.

Missouri has an intrastate scale, for distances through 360 miles, on less-than-carload traffic that is lower than the eastern scale through

[64] The remainder of Wisconsin is in either Illinois territory or extended zone C, in the former of which the rate level is the eastern scale, and in the latter about 110 percent of that scale.

190 miles, beyond which it is the same as, or 1 cent above or below, the latter scale. As a whole, it averages 96 percent of such scale. The motor-competitive class 100 rate on interstate and intrastate traffic from St. Louis to Kansas City, 272 miles, is 92 cents, or the same as the eastern scale, whereas the prescribed interstate maximum rate is 113 cents. On interstate traffic the northern part of Missouri is in zone I, and the southern part in zone II, save that the comparatively narrow strip bordering on Arkansas is in zone III.

Subsequently to the western trunk-line revision, which placed less than one-fourth of Minnesota in zone I and the remainder in zone II, the Minnesota commission prescribed the zone I scale for the entire State on intrastate traffic.[65] That basis has been continued on carloads. The railroads did not seek State authority to increase less-than-carload rates at the time of the general increase of 1938, because of motortruck competition. The less-than-carload rates through the 600-mile maximum are 110 percent of the eastern scale. On less than carloads, minimum 6,000 pounds, the railroads sought and obtained permission from the Minnesota commission to publish volume rates reflecting 80 percent of the normal rates on the first four classes, respectively, the same as the motortruck rates.[66] All these rates are governed by western classification and by practically all exceptions thereto maintained by western trunk-line railroads on interstate traffic.

Not more than one-third, the eastern part, of North Dakota is in zone II, and the remainder is in zone III. The North Dakota commission has prescribed from and to jobbing points throughout the State a single-line, distributing scale of rates extending through 500 miles, subject to western classification and a small number of intrastate exceptions.[67] That scale on class 100 is lower than the zone II scale by 20 cents at 5 miles, 19 cents at 70 miles, 25 cents at 150 miles, 20 cents at 300 miles, and 10 cents at 500 miles. It averages 82.8 percent of the zone II scale. At no distance does it equal the zone III scale. Moreover, while regular class 2 in the North Dakota scale is 85 percent of first class, the percentages for classes 3 and 4 are 66 and 51, respectively, whereas interstate they are 70 and 55. Compared with the eastern

[65] This basis of Minnesota intrastate rates, which by petitions of Watertown, S. Dak., and Superior, Wis., shippers had been assailed as in violation of section 13 of the act, was found not unlawful in the fifth supplemental report (1933), on further hearing, in the western trunk-line revision (197 I. C. C. 57).

[66] The railroads also published these less-than-carload and volume rates to apply interstate between Minnesota and border points in Wisconsin, North Dakota, and South Dakota.

[67] Rates according to the North Dakota distributing scale have been voluntarily extended interstate to the border points of Moorhead and East Grand Forks, Minn., on traffic from and to North Dakota stations on the Great Northern Railway generally, and a limited number of stations on the Northern Pacific Railway.

scale, the North Dakota scale on class 100 is lower for all distances through 145 miles, is the same for 150 and 155 miles, and is higher beyond. For all distances it averages 115.7 percent of the eastern scale.[68] Probably the majority of affected shipments move at rates about the same as, or lower than, the eastern scale, although the record is silent on this point. On the light traffic from and to stations other than jobbing points an intrastate scale applies that is somewhat higher than the one described above.

Approximately the eastern one-third of South Dakota is in zone II and the balance in zone III, which includes a part of the State east of the Missouri River. For competitive reasons the railroads adopted for less-than-carload traffic the rate scales, extending through 600 miles, that the South Dakota commission had prescribed for motortrucks on the first four regular classes, which classes are related to one another by the usual western percentages. One scale applies east of the Missouri River, another west, and an average of the two intersectionally. The scale east of the river, compared with the zone II scale, is lower on class 100 by 11 cents at 10 miles, 21 cents at 70 miles, 24 cents at 150 miles, 18 cents at 300 miles, and 18 cents at 600 miles. Through 120 miles it is lower than the eastern scale. The scale west of the river is 15 percent higher than the one east, and throughout is lower than the zone III scale.

No specific evidence was offered as to the intrastate class rates in Nebraska.[69] More than one-third of the State, the eastern part, lies in zone II and the remainder in zone III.

As to the rates within Kansas, only those for the representative distances set forth in the table next following are shown of record. Zone II embraces about the eastern one-third and zone III the rest of this State.

In eastern Colorado, which lies in zone III, the railroads have adopted for intrastate rates on the first four classes scales representing 107 percent of the zone I scale.[70] The Colorado commission had prescribed those rates on motortruck traffic in small lots, and about 76 and 53 percent of such rates on shipments of 5,000 and 10,000 pounds, respectively. These volume rates also were adopted by the railroads, but the tariff naming them contains a notice of protest to the effect

[68] Cognisance should be taken of the manner of applying the distance scales, i. e., North Dakota to the single-line distances, and eastern to the shortest possible distances.

[69] It appears from the oral argument, that railroad class rates in Nebraska are lower than in South Dakota, and that they are made on a scale which is applied to the air-line distances between points.

[70] As stated, for all distance blocks through 1,500 miles the interstate zone III scale is 125 percent of the zone I scale. Through 300 miles it is 124.2 percent.

that they are deemed extremely low and not compensatory. Nevertheless they have been in effect since 1935.

Arkansas is entirely within zone III. Railroads publish for application in that State an intrastate scale of rates on less-than-carload traffic moving under the first four classes that is approximately 70 percent of the zone III scale through 150 miles, beyond which it grades up rapidly and reaches the zone III basis at 210 miles.[71] This scale is lower than the eastern scale for all distances through 100 miles.

Oklahoma, whose interestate rate basis is now zone III throughout, has intrastate less-than-carload rates on the first four classes that, compared with the zone III scale, are 75 percent at 5 miles and gradually ascend to about 93 percent at 500 miles, beyond which the rates are the same as scale III.[72]

Since 1941, when the railroads voluntarily eliminated the southwestern zone IV rate level, interstate rates throughout Texas have been on the zone III basis. Intrastate rates, published through 900 miles, are for most distance blocks somewhat lower than interstate, and average about 97 percent of the zone III scale.

For ready comparison there are set forth in the following table the less-than-carload rates, for representative distances, on classes 1 and 4 (which are not stated as percentage classes, because the class 4 rates are not in all States 55 percent of first class) published for intrastate application in the western trunk-line and southwestern-territory States listed, and the corresponding rates in the interstate scales for western zones I, II, and III, and in the eastern scale. Application of the particular zone scales in such western States has been heretofore indicated.

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[71] The same scale is in effect on interstate traffic between Arkansas and contiguous points in Missouri, Oklahoma, Louisiana, and Texas, as well as between Arkansas and Memphis, Tenn., for limited application.

In *Less Carload Class Rates, Arkansas and Louisiana*, 256 I. C. C. 656, division 2 on January 14, 1944, found a proposal of the rail carriers and common carrier motor carriers, operating between northern Louisiana and southern Arkansas to cancel their less-than-carload and less-than-truckload class rates leaving in effect the normal class rates, would result in increased rates not shown to be reasonable. In a report on reconsideration, 258 I. C. C. 525, May 8, 1944, we found that the proposed rates, insofar as they would apply from points in Arkansas to destinations in Louisiana, were just and reasonable and not otherwise unlawful; and that the proposed rates, insofar as they would apply from points in Louisiana to destinations in Arkansas, were reasonable, but would be unduly prejudicial to Louisiana shippers and unduly preferential of Arkansas and Memphis shippers to the extent of their excess over the rates concurrently maintained for corresponding distances within Arkansas and from Memphis.

[72] These rates are published also interstate between Oklahoma and contiguous points in Missouri and Arkansas for limited application.

Intrastate rates in Western States on classes 1 and 4, for representative distances, compared with rates in interstate scales

Scales	20 miles		40 miles		60 miles		80 miles		100 miles		130 miles		160 miles	
	Class 1	Class 4	Class 1	Class 4	Class 1	Class 4	Class 1	Class 4	Class 1	Class 4	Class 1	Class 4	Class 1	Class 4
	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.	Cts.
Wisconsin	30	15	39	20	50	25	57	29	62	31	68	34	75	38
Iowa	40	20	48	24	53	27	57	28	62	31	68	34	75	38
Missouri	32	18	39	21	46	25	53	29	59	32	66	36	72	40
Minnesota	36	20	44	24	52	29	60	33	66	36	74	41	80	44
North Dakota	22	11	37	19	48	25	54	27	59	30	67	35	75	39
South Dakota (E) [1]	34	19	40	22	46	25	52	29	59	32	68	37	78	43
South Dakota (W) [1]	39	21	46	25	53	29	60	33	68	37	78	43	90	49
Kansas	36	20	45	25	54	30	63	34	72	40	85	46	97	53
Colorado (Eastern)	42	23	51	28	61	33	69	39	76	42	86	47	93	51
Arkansas	33	18	41	23	48	26	55	30	61	34	69	38	83	46
Oklahoma	36	20	45	25	54	30	63	35	72	40	85	47	97	53
Texas	47	26	58	32	69	38	79	43	87	48	99	54	109	60
Zone I	40	22	48	26	57	31	66	36	73	40	81	45	88	48
Zone II	44	24	55	30	65	36	75	41	83	46	92	51	100	55
Zone III	47	26	59	32	70	39	81	45	89	50	100	55	110	61
Eastern	37	19	44	22	51	26	57	29	62	31	68	35	74	37

[1] South Dakota (E) and (W) mean east and west of the Missouri River; between east and west of the river an average of the 2 scales applies.

Except for upper Michigan, Nebraska, Wyoming's Cheyenne corner, and Louisiana west of the Mississippi River, the States listed in the foregoing table constitute all of western trunk-line and southwestern territories. Intrastate class rates within the excepted States, or portions, apparently are also lower than the interstate bases. Although the record is lacking in that respect, some indication of the relations between intrastate and interstate rate levels may be obtained by aggregating the class 1 rates in the table for these western States lying wholly or partly within a particular interstate zone,[73] and dividing the aggregate by the number of such States for an average. In like manner the average for all western States may be determined for comparison with the eastern scale.[74] Computations by this rather rough and imperfect method produce the following mathematical averages of class 1 rate levels, intrastate or interstate, limited to the representative distances shown in the foregoing table: In zone I, 86.1 percent, in zone II, 76.2 percent, and in zone III, 77.7 percent. The average intrastate levels in the respective zones are 99.5, 99.7, and 110.2 percent of the corresponding class 1 rates in the eastern scale, and the average for all the western States listed in the table is 107.4 percent of that scale.

Among interstate rates that are lower than the maximum bases prescribed are less-than-carload rates, published to meet motortruck

[73] A State with parts in more than one interstate zone was counted in each zone, except that as to South Dakota, whose two parts have different scales, the eastern part was treated as in zone II and the western part as in zone III.

[74] Here the rates for eastern and western South Dakota were averaged in figuring the level for the State.

competition, that are really regular class rates or percentages thereof but are termed less-than-carload commodity rates in the tariff. They are governed by less-than-carload ratings in western classification, over which the exceptions in the tariff take precedence. The latter have been referred to in discussing the classification exceptions in this portion of the report. As there explained, they are simply the rates on regular classes 1, 2, 3, and 4, and on certain percentages from 110 to 27½ of class 1. The rates apply between Chicago and Peoria, Ill., and Milwaukee, Wis., on the one hand, and Wisconsin, upper Michigan, Minnesota, and North Dakota, on the other; and between Twin Cities, Duluth, Minn., and Superior, Wis., on the one hand, and Wisconsin and upper Michigan, on the other. Volume rates are provided on shipments of 5,000, 10,000, and 16,000 pounds of 95, 90, and 85 percent, respectively, of such class rates, and of the percentage rates that range from 90 to 57. The rate of 116 cents (106.4 percent of the corresponding eastern scale rate) on column or class 1 between Chicago and Twin Cities (400 miles) is blanketed back over a large group, and is 23 cents lower at Twin Cities than the prescribed maximum class 1 rate also published between Chicago and Twin Cities. Rate differences between Chicago and other points in the States named, similarly computed, are generally less than at Twin Cities. Thus, in the class 1 rate of 187 cents between Chicago and Fargo, N. Dak., the difference is 11 cents, and to and from other points in North Dakota the differences are smaller by varying amounts. In some instances there are no differences. Differences in corresponding rates to and from Milwaukee are less than those in the rates to and from Chicago. The so-called commodity rates on classes 2, 3, and 4 reflect percentage relations to class 1 that in most instances are about the same as the western interstate relations.

Changing conditions over the years in the field of transportation, especially intensified motortruck competition, indicate that the interstate maximum class-rate levels in territories other than official no longer move freely business that formerly was regarded as of class-rate type, particularly in less than carloads. In the higher-rated territories, notably in the West and Southwest, extremely small proportions of all traffic move subject to classification ratings and at class-rate bases.

As stated, competition with motor carriers has induced the railroads to establish numerous exceptions to the classifications, and to adopt the rates of their competitors on much intrastate class-rate traffic and to some extent on interstate traffic. Prevalence of such competition has dissuaded the railroads from petitioning us for relief under section 13 of the act where commissions of certain western States have ordered rail rates lower than the interstate bases, because

of apprehension that restoration of those bases would divert traffic to competitors and would reduce railroad revenue. Even in this proceeding respondents make no point of, much less assail as unlawful, the existence of intrastate rates substantially lower than the contemporaneous interstate rates; nor do shipper interests raise that question.

POSITIONS OF PARTIES

Rail respondents generally take the position that the present intraterritorial and interterritorial class rates were prescribed by us, that such rates are the result of many years of thorough investigations and earnest efforts by this Commission, the shippers, and railroads, directed to adjusting rates to meet the needs of commerce, and that the present rates adequately meet those needs, and are in many instances below the maximum level prescribed or approved. They contend that the full measure of proof of unlawfulness of the present rates must include proof of changed conditions of reasonable permanency, and that the record is devoid of such proof; that actually the changes in conditions that have occurred are those brought about by the country's entrance into war, and that they are not conditions upon which any permanent freight rate adjustment can be built judiciously or with confidence.

In addition to a denial of the unlawfulness of the rates in issue generally, official territory respondents also deny that the rates within official terriotry, or to and from that territory, are in excess of maximum reasonable rates or otherwise unlawful; but if we should find that reasonable and nonprejudicial class rates within other territories should be equal to those in official territory, they would not oppose joining in the establishment of interterritorial class rates on the official territory level if appropriate conditions are observed. The conditions would provide that class rates be made subject to uniform classification ratings, apply in both directions, and be subject, in their division, to equal bases of divisional prorating factors for the groups of carriers in the different territories.

If revisions are required in the present class rates over standard railroad lines, Bangor and Aroostook Railroad Company and Canadian Pacific Lines, which operate in northern Maine, and Norfolk Southern Railway Company, whose lines are in Virginia and North Carolina, seek special treament in the form of arbitraries for the hauls over their lines similar to that accorded in previous proceedings.

Class I respondents do not consider that the question of a rate basis for earnings to which they may be entitled is presented for consideration in this investigation. They wish to make clear that by refraining from making a valuation presentation herein, they do not agree to or accept the valuation in the cost studies prepared by our staff, and that

they do not concede that such values are the true and actual values of their railroad properties, or that they were reached through the application of correct principles or methods.

The advocates of changes in the existing class rates may be grouped as follows; Those seeking (1) a single and uniform level of class rates throughout the territory included in the investigation; (2) a single and uniform level of class rates in the territory east of the Mississippi River; and (3) the extension to certain States or areas of an existing lower level of class rates.

In the first group are public bodies and associations of shippers in the States of Arkansas, Kansas, Louisiana (west of the Mississippi River), Nebraska, North Dakota, Oklahoma, South Dakota, and Texas, American Farm Bureau Federation, and Tennessee Valley Authority. Generally, they allege that the intraterritorial and interterritorial class rates in and between the territories embraced in the investigation are unreasonable and unduly prejudicial and preferential, and they propose the extension of the official territory level of class rates to the remainder of the considered territory. If the latter cannot be found justified, a few of the parties in western trunk-line territory suggest as an alternative substantial reductions in the differences between the rate levels in the territories or zones.

The second group comprises Southern Governors' Conference, representing the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, Southeastern Association of Railroad and Utilities Commissioners, appearing on behalf of the regulatory authorities of the eight southern States above named, the State of Florida and other Florida interests appearing separately, South Carolina State Ports Authority, Southern Traffic League, and the East Tennessee Border Traffic Association. This group seeks the establishment of the official territory level of class rates throughout the area east of the Mississippi River, and the elimination of the Florida arbitraries. The motor-carrier interveners advocate the same level of class rates east of the Mississippi River, but they contend that the official territory class rates are too low, particularly as applied to less-than-carload traffic.

As part of a permanent adjustment of class rates, the motor carriers propose dual scales of class rates for carloads and less than carloads, with restrictions as to the minimum rates which may be established voluntarily to meet competition. They suggest, however, that a comprehensive traffic test is a prerequisite to the establishment of a rate system on the basis proposed, and appear to favor deferring the test until after the war when it would reflect conditions prevailing in the postwar period and could be made at less cost. All parties, except the motor carriers and those representing Omaha, Nebr., and

Wichita, Kans., opposed dual scales of class rates for carload and less-than-carload traffic, and, as stated, the motor-carrier interests do not propose their establishment at this time.

The proposals made by the motor carriers will be discussed further in this report.

In the third group are State authorities and associations of shippers in Iowa, Kansas, Kentucky, and Minnesota, Topeka Chamber of Commerce, Topeka Traffic Association, Wichita Chamber of Commerce, and two steel manufacturers in the St. Louis district. The States of Iowa, Kentucky, and Minnesota suggest the establishment of the official territory level of class rates in and between those States and official territory and, in the case of Kentucky, between Kentucky and other territories. Twin Cities and Duluth ask such extension to those cities and all of zone I. Topeka advocates that northeastern Kansas be placed in that same zone or territory as northern Missouri or southern Iowa for rate-making and classification purposes. Wichita favors a uniform level of class rates throughout the territory involved in this proceeding. If that is not done, it asks that a single level be prescribed between all points in western trunk-line territory, provided that the level between Wichita and all points included in the investigation be made no higher than that now in effect, or that which may be prescribed within, and to and from points in, western trunk-line zone I. It asks also that it be relieved of the undue preference finding (No. 27) made in the southwestern revision. The Colorado commission does not advocate a single level of class rates throughout the considered territory, but suggests that the class-rate levels in the western trunk-line zones, and the differences between them be substantially reduced. A steel manufacturer at Pueblo, Colo., suggests the extension of the zone II rate level to all of zone III, including the Southwest.

St. Louis manufacturers of iron and steel articles seek rates on those commodities in southwestern and western trunk-line territories properly related to those in southern and official territories. The rates referred to are not the class rates in issue in this proceeding.

Typical of the positions of those parties who seek either a uniform level of class rates throughout the territory involved, or in the territory east of the Mississippi River, is that of the Southern Governors' Conference. It states on brief: "We think that our position is summed up in the one word 'parity'. By 'parity' we mean the uniform application of class rates and classification ratings throughout the territory east of the Mississippi River with a uniformity of class rates and ratings between all of such latter territory and all other territories. * * * So the South here says that if you will let it write the word 'parity', it is willing to leave to the Commission the

methods and manner of bringing about parity." In addition to allegations of violations of sections 1 and 3 of the act, the members of the conference emphasize the contention that the present class-rate structure discriminates against the South and retards its industrial development.

Opposed to a general revision of the class-rate structures are the Governors or public authorities, shippers, and associations of shippers in the States of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont, comprising New England territory; New York, New Jersey, Pennsylvania, Maryland, and Delaware in trunk-line territory; Ohio, Indiana, Illinois, and Michigan in central territory, Wisconsin, partly in western trunk-line and partly in official territory; and groups of shippers in southern territory. In general, their position is that we prescribed the present class rates after comprehensive proceedings extending over a period of years to fit conditions in the respective territories, that there is no evidence of changes in conditions that would warrant findings that the class-rate structures are now unlawful, and that it would be unwise to attempt to devise class-rate structures to apply under conditions that will exist in the postwar period, the nature of which no one can now foresee.

The official territory interests stress the facts that there is no complaint by shippers in official territory that the class rates therein are unlawful, and no contention by official territory respondents that such rates are below maximum reasonable levels. They contend, therefore, there is no basis in the record for increases in the class rates in that territory. They insist that even if the evidence shows that a change in the class-rate structure is necessary to make possible and to stimulate the industrial development of the South and Southwest, which they deny, we are without power to require a revision of the class rates for such a purpose; and that, even if rates could be prescribed for the purpose of influencing the location of manufacturing industries, we should not ignore the effects upon the communities and population of the North that may result from a shift of industry from the North to the South.

The State of Ohio, Public Service Commission of Wisconsin, and Wisconsin Manufacturers Association are opposed to a general revision of the class-rate structure, and, as stated, have sought to have the investigation discontinued or deferred for the period of the emergency caused by the war. If, however, there is a general revision of the class-rate structures, the Wisconsin interests seek the application of the eastern scale of class rates between all of Wisconsin or, at least, the lower half of the State and official territory, except as key rates in harmony therewith shall be provided, and class rates between Wisconsin and other territories based on the principles of the so-called

cottonseed formula.[75] If the official territory level of class rates should not be extended to the entire State of Wisconsin, Green Bay Association of Commerce asks for its extension to Green Bay and nearby points, and the elimination of the zone C differentials.

The Missouri Public Service Commission and commercial interests at St. Louis, Kansas City, St. Joseph, and Springfield, Mo., oppose a revolutionary turnover of the rate structure; but if revisions are made, they urge that the adjustment of rates to be prescribed for Missouri should be brought closer to that which may be provided for central territory.

Representatives of certain southern industrial interests and shippers located in the southern States oppose a general revision of the southern class rate structure or of the class rates between southern and official territories. Their position is that the present class rates considered as a whole are lawful and are well suited to southern economy, do not retard the development of manufacturing in the South, and that mile-for-mile uniformity of southern class rates with those in official territory would so affect the revenues of southern carriers as to require an upward revision of commodity rates within and from the South, with disastrous effects upon southern industry. Certain southern interests on oral argument strongly opposed any action herein which might result in increases in the levels of exception or commodity rates within or to and from southern territory.

The Southern States Industrial Council, a voluntary, nonprofit organization, composed of the major manufacturing interests in 13 southern States, expressed the view that rate inequalities should be adjusted through recognized channels without involving the entire basic rate structure of the country. It does not favor widespread changes that will affect adversely the South's present industrial economy, the growth and development of which is said to have been fostered by the basic commodity rate structure in southern territory.

On argument, the Southeast Shippers' Conference, a voluntary organization of manufacturers, shippers, commercial organizations, and receivers of freight located in the South, stated that the prevailing system in the South of distributing the prices of transportation among articles of commerce is responsive to the South's development and has proved generally satisfactory. It opposes the uniformity sought.

The New Orleans Joint Traffic Bureau on argument expressed the opposition of its members to uniformity of class rates.

A large meat packer requests us to provide in our report that no order entered in this proceeding shall be taken as authority for, or

[75] The cottonseed formula was prescribed by the Commission in *Cottonseed, Its Products, and Related Articles* (1932), 188 I. C. C. 605, 657; but it was rescinded in the supplemental report in that proceeding (1934), 203 I. C. C. 117.

shall effect a change in, the rates now charged for the transportation of packing-house products. In several proceedings, relations between the rates on such products from competing origins have been prescribed. Some of these rates were originally class rates, but they have been removed from that category as a result of general increases. This packer's position is that any readjustment which would affect the closely integrated structure of rates on packing-house products should be made only in a proceeding in which all of the facts peculiar to the transportation of those commodities are considered.

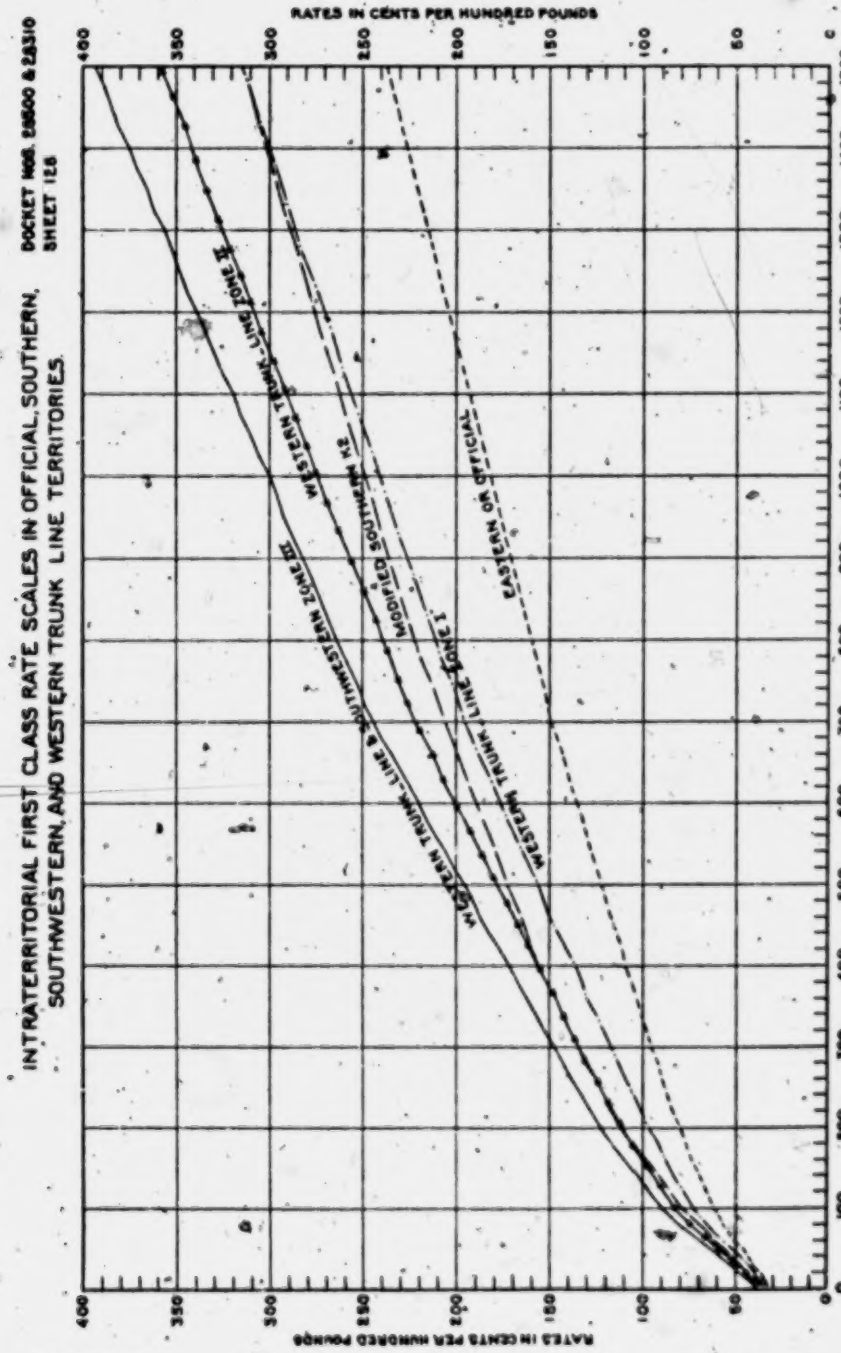
GENERAL CHARACTERISTICS OF RATE STRUCTURES

Freight-rate structures are composed of class rates, governed either by the ratings in a standard freight classification or by exceptions to the classification;[18] column rates, which apply to specific commodities or groups of commodities and thus assume the nature of commodity rates, but follow the contour of class-rate scales by fixed percentages of the first-class rates; and commodity rates, which are published to apply on particular commodities, but are not related by definite percentages to the first-class rates. Exception rates and column rates which, in some instances, apply throughout a particular territory and, in others, to limited portions of the territory or between particular points, are usually designed to fit the special conditions relating to the transportation of a single commodity or group of commodities. The principal reasons usually assigned for relating rates to first-class rates by definite percentages are: Simplicity of publication and the advantage of relief from the provisions of section 4 of the act already granted in connection with the class rates.

The interstate class rates under investigation in this proceeding are, generally speaking, those prescribed by us in the general class rate revisions previously described. These distance scales of class rates when prescribed, and as subsequently changed, were subject to various modifications, such as the employment of formulas for making certain interterritorial rates, the superimposition of subterritorial and zone arbitraries, the employment of key rates, and moderate groupings of stations.

These distance scales are marked not only by differences in level but also by variations in the rates of progression. The levels and progressions of the class-rate scales prescribed by us in the general class-rate revisions, as increased in 1938, and as reduced in some instances by the voluntary action of the carriers, are shown on the accompanying chart:

[18] Exceptions are of two types, those that transfer the rates on an article from one standard class rate column to another, and those that utilize intermediate columns in the system of class rates not assigned to any standard class.


INTRATERRITORIAL FIRST CLASS RATE SCALES IN OFFICIAL, SOUTHERN, SOUTHWESTERN, AND WESTERN TRUNK LINE TERRITORIES.
DOCKET NOS. 28500 & 28310
SHEET 128
RATES IN CENTS PER HUNDRED POUNDS
MILES
EASTERN OR OFFICIAL
WESTERN TRUNK-LINE ZONE I
MODIFIED SOUTHERN NO. 2
WESTERN TRUNK-LINE ZONE II
SOUTHWESTERN ZONE III
WESTERN TRUNK-LINE & SOUTHWESTERN ZONE III

From the standpoint of the volume of traffic transported, class rates are the least important of the different kinds of rates. The great preponderance of traffic within and between the several territories is transported on commodity rates. The relative proportion of traffic transported at class or other rates has fluctuated from time to time, but the volume of traffic, particularly carload traffic on which class rates have applied has been substantially less for many years than that on which exception rates have applied. Motor-vehicle competition has accelerated the establishment in recent years of numerous exception and commodity rates, even on less than carloads.

A study of the movement of all carload traffic transported on September 23, 1942, and the revenue received therefrom, testified to by a member of our staff, affords a rough approximation of the relative importance of traffic moving on class rates, exception rates, and commodity rates. The results, by types of rates, are shown below. The first table contains the proportions of freight by carloads and the revenue thereon on all traffic between all points in the United States, and the second table is the percentage distribution by carloads of carload freight within and between the territories embraced in this proceeding.

All carload traffic transported on Sept. 23, 1942

Type of rate	Percent of carloads	Percent of revenue
Class	4.1	6.3
Exception	10.7	16.1
Commodity	85.2	77.6

Territories (within, or from one to another)	Percent of carloads		
	Class rates	Exception rates	Commodity rates
Official	5.8	17.6	[illegible]
Southern	1.8	6.0	[illegible]
Western trunk-line	.6	.2	[illegible]
Southwestern	2.4	1.1	[illegible]
Official to southern	18.6	30.3	[illegible]
Southern to official	.9	4.9	[illegible]
Official to western trunk-line	12.3	25.4	[illegible]
Western trunk-line to official	3.1	1.0	[illegible]
Official to southwestern	22.5	32.0	[illegible]
Southwestern to official	1.5	3.4	[illegible]
Southern to western trunk-line	1.5	13.5	[illegible]
Western trunk-line to southern	6.1	3.1	[illegible]
Southern to southwestern	6.1	22.1	[illegible]
Southwestern to southern	1.2	4.3	[illegible]
Western trunk-line to southwestern	15.0	6.2	[illegible]
Southwestern to western trunk-line	2.0	3.0	[illegible]

It will be observed from the above table that very little traffic is carried on class rates, and that the percentage of the total carload traffic moving on such rates is generally much greater on interterritorial traffic than it is on intraterritorial traffic. This is a rather

surprising and significant fact in view of what we said relative to the proper functioning of class-rate structures in the prior decisions in which many of these rates were prescribed.[77] The least use of class rates is in western trunk-line territory, where it is only 0.6 percent. In southern territory it is only 1.8 percent and in southwestern territory, 2.4 percent. In official territory it is 5.8 percent. On the other hand, on interterritorial traffic the percentage is as high as 22.5 percent.

IMPORTANCE OF INTERTERRITORIAL TRAFFIC

The importance of interterritorial traffic as compared with intraterritorial traffic is shown by the following studies:

On May 27 and September 23, 1942, the intraterritorial movement of all carload freight within official territory aggregated 111,914 carloads; 33,693 carloads moved to official territory from other territories; and 20,215 carloads moved from official territory to other territories. The total interterritorial movement between official territory and other territories amounted to 54,008 carloads, 48.3 percent of the intraterritorial traffic, and 32.6 percent of the combined intraterritorial and interterritorial movement.

On the same dates the intraterritorial movement within southern territory amounted to 23,512 carloads; 10,556 carloads moved to southern territory from other territories, including 7,008 carloads from official territory; and 18,649 carloads moved from southern territory to other territories, including 15,989 carloads to official territory. The total interterritorial movement between southern and other territories amounted to 29,205 carloads, 124.2 percent of the intraterritorial traffic, and 55.4 percent of the combined intraterritorial and interterritorial movement.

[77] In our decision in the *Southern Class Rate Investigation*, 100 I. C. C. 513, at page 603, in setting forth certain general principles to be observed as a guide in the prescription of the new basis of class rates in southern territory we said, among other things: "The new class rates should look also to the future. They should, for example, be so framed as to facilitate the elimination not only of special classification exceptions but also of many commodity rates which provoke complaints of discrimination and have no other excuse than an inadequate and imperfect class rate structure."

In a later proceeding, *Consolidated Southwestern Cases*, 123 I. C. C. 203, in pursuance of the same principle in connection with class rates in the Southwest, we said, at page 234: "We are persuaded that the interests neither of the public nor of the carriers are served by maintaining carload class rates on such high bases that they are rarely used, making it necessary to follow the practice which has prevailed for many years in the Southwest of establishing commodity rates on practically all commodities which move in carloads in material volume. It is due to this practice that many of the discrepancies in rates which are the subjects of complaint have arisen. Existing widespread dissatisfaction with the complexity of tariffs in the Southwest is discussed in a later section of this report. Much of this complexity arises out of the prevalence of commodity rates and the failure to adjust them on a basis which would fairly relate the various points which compete with one another. In the circumstances, we are of opinion that we should follow the principle that carload class rates should be prescribed which are capable of moving many of the carload commodities, as is the case today in official and western trunk-line territories, thus making it possible to eliminate from the tariffs thousands of commodity rates."

On May 27 and September 23, 1942, within western trunk-line territory the intraterritorial movement consisted of 32,989 carloads; 12,943 carloads moved to that territory from other territories; and 12,120 carloads moved from that territory to other territories. The aggregate interterritorial movement between western trunk-line territory and other territories amounted to 25,063 carloads, 76.0 percent of the intraterritorial movement, and 43.2 percent of the combined intraterritorial and interterritorial movement.

Within southwestern territory on the dates named, the intraterritorial movement consisted of 10,985 carloads; 4,870 carloads moved to that territory from other territories; and 11,356 carloads moved from that territory to other territories. The total interterritorial movement between the Southwest and other territories amounted to 16,226 carloads, 147.7 percent of the southwestern intraterritorial traffic, and 59.6 percent of the combined intraterritorial and interterritorial movement.

The relative importance of interterritorial traffic becomes much greater when carload shipments that move on class rates or on exception rates are considered alone or together. For example, if the percentages of class, exception, and commodity rates charged on September 23, 1942, hereinbefore indicated, are applied to the carloads that moved on both that date and May 27, 1942, it is found that only 423 carloads moved on class rates within southern territory, whereas 883 carloads moved on class rates from official territory to southern territory, and 144 carloads moved on such rates from southern territory to official territory. Hence, if class-rate traffic is considered alone, the interterritorial movement between southern and official territories, 1,027 carloads, was 243 percent of the southern intraterritorial volume, and 70.8 percent of the sum of that traffic and the southern-official interterritorial movement. These ratios are not appreciably affected if traffic that moves on exception rates is considered together with traffic that moves on class rates. By the use of the method of computation just described, it is indicated that the combined exception and class-rate movement on the 2 days stated amounted to 3,427 carloads from official to southern territory, 927 carloads from southern to official territory, and 1,834 carloads within southern territory. The interterritorial movement between southern and official territories on class and exception rates, 4,354 carloads, was 237 percent of the southern intraterritorial movement, and 70.4 percent of the combined interterritorial and intraterritorial movement, 6,188 carloads.

RELATIVE LEVELS OF CLASS RATES IN EACH TERRITORY

Class 100 rates applicable at the close of the hearings, April 1, 1943, exclusive of the temporary general increase of 1942 then also in effect

but suspended May 15, 1943, between representative points throughout the several territories embraced in this proceeding are set forth in appendix 9 to this report, together with the distances over the shortest routes by which carload traffic can be moved without transfer of lading. Opposite the rates, except within official territory, are shown the rates for corresponding distances under the eastern scale.

Some of the typical rates shown in appendix 9 are as follows: The rate from New York, N. Y., to Chicago, Ill., is 167 cents, whereas the eastern scale rate for the distance of 890 miles is 171 cents. The rate from Atlanta, Ga., to New Orleans, La., 490 miles, is 173 cents, whereas the eastern scale rate is 122 cents. From Duluth, Minn., to Wichita, Kans., 789 miles, the rate is 230 cents, whereas the eastern scale rate is 160 cents. From Memphis, Tenn., to Houston, Tex., 554 miles, the rate is 209 cents, whereas the eastern scale rate is 130 cents.

Looking at the interterritorial rates, the rate from Atlanta to New York, 873 miles, is 212 cents, whereas the eastern scale rate is 168 cents. The rate from Atlanta to Chicago, 728 miles, is 210 cents, whereas the eastern scale rate is 153 cents. The rate from Pittsburgh, Pa., to Kansas City, Mo., 852 miles, is 197 cents, whereas the eastern scale rate is 168 cents. The rate from Detroit, Mich., to Dallas, Tex., 1,116 miles, is 289 cents, whereas the eastern scale rate is 196 cents. The rate from Atlanta to Kansas City, 879 miles, is 240 cents, whereas the eastern scale rate is 171 cents. The rate from Atlanta to Dallas, 822 miles, is 261 cents, whereas the eastern scale rate is 163 cents.

In order to limit their number to a reasonable and practical minimum, 56 points are used in appendix 9. Distances between them range from 133 to 2,537 miles. Less than 1.6 percent of the 1,542 distance items used are under 200 miles.

In making any comparisons of the levels of the class rates within the respective territories or zones, we are confronted with the fact that differences in the applicable classifications affect the levels of the class rates as much as or more, in some instances, than the differences in the levels of the class rate scales. When comparisons are made with the eastern class rate scale, it must be remembered that higher class rates apply between points in New England zones A and B, between points in Michigan zone C, and to some extent between those points and the remainder of official territory; and that the key rates prescribed are in general somewhat lower than the scale.

Official classification has 7 regular classes ranging from 100 to 27½ percent of first class; southern classification has 12 regular classes ranging from 100 to 47½ percent of first class; and western classification has 10 regular classes ranging from 100 to 17½ percent of first class. In addition, each classification has 7 regular classes above 100. There are also certain irregular classes usually expressed in terms of

percentages of first class in each classification. A comparison based on averages of all class rates for the regular classes gives undue weight to classes which are relatively unimportant. Such a comparison also gives undue weight to classes below 27½ percent of first class in southern and western classification which have no counterpart in official classification.

A comparison based on averages of the first-class rates for all distance blocks in the various first-class rate scales gives undue weight to the rates for the shorter distances because of the larger number of distance blocks for the distances up to 200 miles.

An analysis of less-than-carload traffic for the week of September 8 to 14, 1939, inclusive, was made by the Association of American Railroads by direction of the chief traffic executives of the class I railroads. This study shows that the weighted average of class rates and rates related by fixed percentages to first class, on intraterritorial traffic in official territory, was 65.9 percent of first class, and on traffic originated and terminated in official territory 66.6 and 66.1 percent of first class, respectively. For southern territory the corresponding figures were 56.1, 59.0, and 61.1 percent of first class. For western territory the corresponding figures were 68.9, 69.2, and 69.5 percent of first class. In all three territories the average rate on such less-than-carload traffic is above fourth class and below third class (fourth class being 50 percent in official and 55 percent in western and southern classifications, and third class being 70 percent of first class in all three territories).

The total number of pounds of less-than-carload traffic, under all types of rates, carried in each territory is shown in the following table:

Official territory	
Intraterritorial	292, 487, 885
Originated	347, 317, 520
Terminated	318, 572, 095
Southern territory	
Intraterritorial	97, 694, 576
Originated	125, 215, 886
Terminated	130, 275, 846
Western territory	
Intraterritorial	179, 622, 327
Originated	190, 887, 014
Terminated	214, 522, 479

The originated and terminated pounds include both interterritorial and intraterritorial traffic. A separation between interterritorial and intraterritorial traffic is only partially made.

The average haul of less-than-carload traffic within the South is considerably less than in official territory. For example, 50 percent of the tonnage in official territory was carried for distances up to 350 miles and the balance for longer distances, whereas in southern territory 50 percent was carried for distances up to about 175 miles and the balance for longer distances. The percentage of the higher-rated traffic carried increased for the longer distances in each territory.

The ratio of less-than-carload traffic moving on commodity rates to the total less-than-carload traffic moving on class rates was 5.1 percent in official, 139.2 percent in southern, and 40.0 percent in western territory. These figures are for intraterritorial traffic and are representative. It is noted that more less-than-carload traffic moves in the South on commodity rates than on class rates. This may be accounted for by the heavy movement in the South of cotton, grain products, and fertilizer on less-than-carload commodity rates.

A comparison of the first-class rates in the various class rate scales, using 50-mile blocks up to 200 miles and 100-mile blocks up to 1,000 miles, is shown by the following table:

Distance	Eastern scale	Modified[1] southern scale		Zone I		Zone II		Zone III	
	Rate	Rate	Percentage of eastern	Rate	Percentage of eastern	Rate	Percentage of eastern	Rate	Percentage of eastern
Miles	*Cents*	*Cents*		*Cents*		*Cents*		*Cents*	
50	47	57	121.3	53	112.8	61	129.8	65	138.3
100	68	79	127.4	73	117.7	83	133.9	90	146.2
150	73	96	131.5	86	117.8	98	134.2	107	146.6
200	80	112	140	97	121.3	111	138.8	123	153.8
300	96	134	139.6	117	121.9	134	139.6	147	153.1
400	109	156	143.1	136	124.8	156	143.1	172	157.8
500	122	173	141.8	156	127.9	178	145.9	196	160.7
600	135	189	140	176	130.4	200	148.1	220	163
700	149	206	138.3	196	131.5	222	149	244	163.8
800	160	222	138.8	210	131.3	239	149.4	263	164.4
900	171	235	137.4	226	132.2	256	149.7	282	164.9
1,000	182	249	136.8	240	131.9	273	150	300	164.8
Average			137.7		129 6		144.4		159.4

[1] As modified voluntarily by the carriers in 1941 for distances up to 190 miles.

INDIRECT RESULTS OF PROPOSED REVISION

The first-class rates have been used, since they were prescribed in the general revisions heretofore mentioned, as a base to which column rates and rates on other classes have been related. As this method of publishing rates has become a general practice which we have approved and have frequently employed in prescribing rates on particular commodities or groups of commodities, the progressions and levels of the first-class rate scales have assumed a correspondingly increasing importance both to shippers and to carriers.

While, as previously explained, rates governed by exceptions to the classification and column rates are not directly in issue in this proceeding, at the same time evidence of a general nature concerning such rates and their relation to class rates was admitted. In determining the issues in this proceeding, it seems to us that we should not close our eyes to the possible indirect effect which our decision may ultimately have upon these collateral segments of the freight-rate structure and the consequent results upon the revenues of the railroads. *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.*, 213 I. C. C. 259. This means, of course, that we should take notice of, and in our ultimate conclusions accord proper weight to, the fact that an important percentage of both intraterritorial and interterritorial traffic is transported at exception or column rates which might be affected if class rates are substantially changed.

A witness for the southern carriers introduced an exhibit purporting to show the effect of applying the official classification and the official class rate scales between points in southern territory, and between points in that territory and points in official, southwestern, and western trunk-line territories, to carload commodity rates published as exceptions to the governing classification or as column rates related to the first-class rates. Atlanta, Ga., and Louisville, Ky., are used as representative of the southern territory and rates between those points are assumed to be representative of rates between points in that territory. Chicago, Ill., and New York, N. Y., are used as representative of official territory and rates between Atlanta and those two points are assumed to be representative of rates between southern and official territories. Similarly, rates between Atlanta and Dallas, Tex., are assumed to be typical of rates between southern and southwestern territories, and rates between Atlanta and Omaha, Nebr., are assumed to be typical of rates between southern and western trunk-line territories.

According to this comparison, application of the official class-rate scales and the present official classification would result in changes in carload rates, now published as exceptions to the classification or as column rates, as indicated in the following table:

Between Atlanta, Ga., and—	Reductions		Increases	
	Number	Percent	Number	Percent
Louisville, Ky.	705	76.2	211	22.8
Chicago, Ill.	580	72.1	200	24.9
New York, N. Y.	406	53.4	355	46.6
Dallas, Tex.	399	88.5	50	11.1
Omaha, Nebr.	335	72.2	117	25.2
Total	2,425	71.2	933	27.4

No change would be made in 3 percent of the rates from and to Chicago, 1 percent from and to Louisville, 0.4 percent from and to Dallas, and 2.6 percent from and to Omaha. In the aggregate no change would be made in 47 rates, 1.4 percent of the total.

The exhibit does not purport to show that there is a movement of each of the commodities, or to show the volume of movement under any of these rates. It does not disclose which rates are exceptions to the classification and which rates are column rates. Between Atlanta and New York the reductions average 53.4 percent and the increases average 46.6 percent. It may be doubted that the rates between Atlanta and Chicago and New York are representative of the interterritorial rates between official and southern territories. Interterritorial class rates between official territory and the border States of Kentucky, southern Virginia, North Carolina, and northeastern Tennessee are on a lower basis. It is also doubtful whether rates between Atlanta and Louisville are representative of rates between all points in southern territory.

COST STUDIES

Cost studies relating to the relative cost of rendering transportation service in the various territories, prepared by F. K. Edwards, our head cost analyst, were received in evidence. Such studies are hereinafter referred to as the Edwards cost studies.[78] Starting with the operating expenses, rents, and taxes of class I steam railways, as reported in their 1939 annual reports, separated between freight service and passenger service in accordance with the rules prescribed by us, the studies involve three principal steps:

1. Assignment of railroads, or divisions thereof, to geographical areas corresponding as nearly as practicable to the rate territories.

2. Expenses for individual railroads, or divisions thereof, in each territory were divided into groups, each group of expenses being associated with appropriate service units, including revenue car-miles, revenue gross ton-miles, and cars originated and terminated. The unit costs were then obtained by dividing the aggregate of the territorial expenses in each group by the applicable territorial units.

3. The cost for particular services was then built up from the unit costs.

Rail costs are fundamentally divisible into two components. First, those expenses which vary directly with the traffic handled, and hence are directly assignable to particular kinds of traffic, i. e., the out-of-pocket or variable expenses, and secondly, those expenses of a constant

[78] They have been reproduced in substantial part in Senate Document No. 63, 78th Cong. 1st sess., under the title "Rail Freight Service Cost Studies In the Various Rate Territories of the United States."

or fixed character, which are not capable of assignment to particular kinds of traffic, and which must be borne by the various kinds of traffic in proportion to the ability of each to pay. The sum of the out-of pocket costs plus a pro rata distribution of the constant cost is referred to as fully distributed cost.

Out-of-pocket or variable costs were separated among (1) running, (2) switching, (3) station, (4) special services not related to the study (such as the operation of grain elevators and storage warehouses), and (5) general overhead expenses.

Running expenses (for carload service) were further subdivided among (*a*) freight-train car maintenance and rental expense for "other than mileage" cars, (*b*) miscellaneous running expenses common to all cars (including expenses for interchange, intertrain and intratrain switching), and (*c*) all other running expenses (including the wages of train crews, locomotive maintenance, maintenance of way, and train fuel). These three groups of running expenses were distributed over the traffic on the basis of revenue car-miles, excluding mileage cars; revenue car-miles of all cars, including mileage cars; and revenue gross ton-miles, respectively.

Switching expenses were separated between those incurred in connection with work performed at origin and destination points and those incurred in connection with work performed at intermediate points where trains are reclassified or cars interchanged. This separation of the expenses was based on the count of cars given each class of switching, weighted for the relative engine-minutes per car for each kind of work. The weighting factors used were developed from or checked against the engine-minutes determined from a number of switching studies which had previously been introduced in other cases before us, or which had been made by our cost analysts at our direction. Switching expenses at origin and destination were reduced to a loaded-car basis. Switching expenses at intermediate points were included with the miscellaneous running expenses and treated on a car-mile basis. Freight-train car maintenance, both mileage and time portion, incurred in connection with origin and destination switching work, and detention for loading and unloading, was distributed on the basis of revenue carloads originated and terminated.

Station expenses (clerical) were apportioned to carload traffic on a weighted consignment basis, and were reduced to a cost per carload consignment.

Overhead expenses were apportioned to running, switching, station, and services not included in the study on the basis of the directly assigned or apportioned expenses.

The same general procedure was followed in developing costs for less-than carload traffic, except that different weighting factors were

used for freight-house-track switching than for industry or team-track switching. Station clerical expenses, apportioned to less-than-carload traffic on a weighted consignment basis, were reduced to a cost per consignment. Station less-than-carload platform expenses were apportioned between origin and destination work, and work at transfer points, on the basis of the tons handled in each type of service. The expenses at origin and destination points were treated on a cost per ton basis, while that at transfer points was treated as a cost per less-than-carload net ton-mile.

For the purpose of determining the carload fully distributed expenses and over-all revenue needs, the constant costs were distributed over the revenue tons and revenue ton-miles of carload traffic handled after deducting the contribution, if any, made towards such expenses by the less-than-carload and passenger services. This has the effect of spreading the constant expenses over the revenue producing units of traffic ignoring differences of ability to pay. Constant expenses related to origin and destination terminal work were apportioned on a per ton basis, while the remainder was apportioned on a ton-mile basis. Insofar as the constant expenses are concerned, one ton or ton-mile was treated as no different from any other ton or ton-mile. The cost study gave no consideration to differences in the ability to pay of the various kinds of traffic handled in each territory, this being viewed as an element for consideration separate and apart from costs.

The results of apportioning the constant or fixed expenses on the basis of the directly assigned costs, a procedure commonly used in cost studies, was also introduced. However, such figures were restated by our head cost analyst, the explanation being made that the apportionment of the constant expenses on the basis of the direct costs has the effect of substantially increasing the fully distributed cost on light-loading traffic such as less-than-carload traffic. Where the direct costs per ton or per ton-mile vary widely from the system average, the distribution of the constant costs on the basis of such direct costs apportions a relatively large amount of the constant expenses to shipments where the out-of-pocket costs are relatively high and a relatively small amount where the out-of-pocket costs are low. Less-than-carload traffic has a relatively high out-of-pocket cost. The net load per car may range from 4 to 10 tons compared to the carriers' system average loads for all traffic ranging from 25 to 35 tons. The ratio of gross ton-miles to revenue ton-miles may exceed 5 to 1 as compared to ratios of between 2.0 to 1 and 2.5 to 1 obtaining for the carriers' system average traffic. The station clerical expenses per hundredweight are substantially higher than for carload traffic. Less-than-carload traffic receives a platform handling which is not gen-

erally accorded carload traffic. It is obvious that such transportation conditions surrounding the movement of less-than-carload traffic will result in high out-of-pocket or direct expenses per hundredweight. On the other hand, the constant or fixed costs by their very nature are unaffected by the unfavorable transportation conditions peculiar to less-than-carload traffic. As these latter expenses continue irrespective of how the less-than-carload traffic is loaded, and would continue unchanged even though this traffic were not handled at all, their apportionment on a basis which reflects an extremely high ratio of gross ton-miles to net ton-miles, and similar unfavorable operating factors, would not be justified.

Allowances for return were based on recommended rate-making values furnished by our Bureau of Valuation. The return was treated on two bases. Under one method the total allowance for return, computed at both 4 percent and 5¾ percent, was apportioned on the basis of the operating expenses, rents, and taxes. Under the second method the property was separated between line haul and terminal, and the allowance for return distributed using in large measure the same units as were used in distributing the expenses. The study treated 50 percent of the rate-making value of road property and 100 percent of the rate-making value of the equipment as being variable with traffic volume over the long term period. This is equivalent to approximately 57.5 percent of the total rate-making value of the carriers. The allowance for return on the variable portion of the line-haul road property was distributed on a gross ton-mile basis, while the return on the variable portion of the terminal property was distributed on an equated car basis between origin and destination switching and intermediate switching. The allowance for return on freight-train cars was apportioned between running, origin, and destination switching (including detention for loading and unloading), and intermediate switching on an active car-day basis. The allowance for return on the value of locomotives used in switching service was similarly apportioned between origin and destination switching and intermediate switching on the basis of the equated cars handled. The allowance for return on road property, freight-train cars, and yard locomotives thus charged to origin and destination switching was distributed on a per-car basis. The return on property devoted to intermediate switching was treated as proportional to the length of haul and distributed on a car-mile basis. The return on the value of freight-train cars, apportioned on an active car day to running service, was also distributed on a car-mile basis. The return on the value of road locomotives used in running service was distributed on a gross ton-mile basis.

The allowance for return on the constant or fixed portion of the property was treated on the same basis as was the constant or fixed portion of the operating expenses. The return on the constant portion of the property used in connection with origin and destination terminal work was distributed over the traffic originated and terminated on a revenue ton basis. The remainder was related to the line-haul operation and distributed on a revenue ton-mile basis. In the foregoing computations the allowance for return was computed at 4 percent. Adjustments of the cost to reflect any other rate of return were provided for. The territorial cost comparisons were principally based, however, on the 4-percent figure, this being relatively close to the return earned by the carriers in the year covered by the study.

The service units required to move various net loads in given types of cars for varying distance were next accumulated giving recognition to the weight of the load, the tare weight of the car used (box, gondola, et cetera), and the ratio of empty to loaded car-miles experienced throughout the territory on each type of equipment.

These service units were priced out at the territorial average unit costs. This produced the running, switching, and station costs per carload, such cost being next reduced to a cost per 100 pounds of net load. The costs thus computed reflect the net weight of the load, the length of the haul, the tare weight of the equipment, the percent empty return of the equipment and, insofar as switching and station expenses are concerned, whether carload or less than carload. They also reflect territorial average transportation conditions, i. e., main-line and branch-line operation, through-train and way-train operation, operation on lines of heavy traffic density and lines of light traffic density, and the switching performed in large terminals and small terminals. The influence of hauling some types of traffic, such as coal and ore, in heavier than average trains, with the remainder of the traffic being handled in lighter than average trains, was also given consideration in supplementary studies. The territorial comparisons would not be significantly affected by this element.

Relative territorial costs.—Territorial cost comparisons were based on the cost of furnishing a given amount of transportation service in the respective territories, taking into consideration every kind of traffic carried, whether handled in box, gondola, tank, stock, flat, or refrigerator cars, and covering 300 miles of haul. Although cost data were compiled for all lengths of haul, principal weight was attached to the haul of 300 miles per shipment originated as this distance most closely approximates the length of haul in each territory in 1939.

Approximate average hauls per shipment in the East, South, and West for the year 1939 were computed as follows:

	East, excluding Pocahontas	East, including Pocahontas	South	West
	Miles	*Miles*	*Miles*	*Miles*
Carload	249	273	278	342
Less than carload	454	470	465	495
All shipments	252	276	282	345

Most of the comparisons were based on both the out-of-pocket and the fully distributed costs. While the principal cost comparisons were related to the year 1939, consideration was also given to the relative territorial costs for the periods 1930–39, 1937–41, and 1941. The figures quoted hereinafter are based on cost scales introduced by our head cost analyst, but adjusted to reflect the corrections of record made by him in response to criticisms of the study, and corrected to reflect the revised assignment of commodities to classes of equipment. They do not include payment of loss and damage claims.

The following table contains, for 1939, the indexes of out-of-pocket and fully distributed costs of hauling boxcar, gondola-car and hopper-car traffic for distances of 100, 300, and 500 miles in each territory. Costs are based, first, on assumed identical loads and, secondly, where territorial loading data were available, on the actual average loading by types of equipment experienced in each territory. The base, 100, to which the territorial figures are related, is the average car-load cost in that year for the traffic, in the same classes of cars, in the United States, as a whole.

Relative territorial carload cost indexes (1939) for traffic moving in box and gondola and hopper cars for hauls of 100, 300, and 500 miles

[For purposes of comparison United States average cost = 100]

Line No.	Territory and miles	Boxcars				Gondola and hopper cars			
		Based on assumed identical load of 25 tons		Based on actual average loading of boxcars		Based on assumed identical load of 50 tons		Based on actual average loading of gondola	
		Out-of-pocket costs	Fully distributed costs	Out-of-pocket costs	Fully distributed costs	Out-of-pocket costs	Fully distributed costs	Out-of-pocket costs	Fully distributed costs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	New England (territory 1):								
1	100 miles	111	134			119	145		
2	300 miles	119	143			128	152		
3	500 miles	123	148			131	154		

Relative territorial carload cost indexes (1939) for traffic moving in box and gondola and hopper cars for hauls of 100, 300, and 500 Miles—Continued

Line No.	Territory and miles	Boxcars				Gondola and hopper cars			
		Based on assumed identical load of 25 tons		Based on actual average loading of boxcars		Based on assumed identical load of 50 tons		Based on actual average loading of gondola	
		Out-of-pocket costs	Fully distributed costs	Out-of-pocket costs	Fully distributed costs	Out-of-pocket costs	Fully distributed costs	Out-of-pocket costs	Fully distributed costs
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
	Eastern excluding New England (territory 2):								
4	100 miles	106	101			106	100		
5	300 miles	105	100			103	97		
6	500 miles	106	100			103	97		
	Eastern including New England (territories 1, 2):								
7	100 miles	106	102	108	104	106	102	108	102
8	300 miles	105	102	107	103	103	100	103	100
9	500 miles	106	102	106	102	104	100	104	99
	Pocahontas (territory 5):								
10	100 miles	83	69	84	70	84	65	84	65
11	300 miles	82	67	84	68	82	63	82	63
12	500 miles	82	67	83	67	81	63	81	63
	Eastern including New England and Pocahontas (territories 1, 2, 5):								
13	100 miles	102	98	104	99	103	95	100	95
14	300 miles	102	96	103	98	102	94	100	96
15	500 miles	102	95	103	96	101	93	100	93
	Eastern including New England and State of Kentucky:								
16	100 miles	104	101			106	100		
17	300 miles	104	101			103	99		
18	500 miles	104	100			103	99		
	Eastern including New England, Pocahontas, and State of Kentucky:								
19	100 miles	102	97			103	95		
20	300 miles	101	96			100	93		
21	500 miles	101	95			100	93		
	Southern (territory 6):								
22	100 miles	89	92	90	94	94	95	100	98
23	300 miles	93	96	96	97	97	99	103	102
24	500 miles	95	98	97	99	100	101	105	104
	State of Kentucky:[1]								
25	100 miles	79	76			84	75		
26	300 miles	82	77			86	77		
27	500 miles	83	77			88	78		
	Southern, excluding State of Kentucky:[1]								
28	100 miles	91	95			94	100		
29	300 miles	95	101			100	105		
30	500 miles	97	103			102	107		
	Eastern, including New England and Southern (territories 1, 2, 6):								
31	100 miles	102	100			103	100		
32	300 miles	102	101			103	100		
33	500 miles	103	100			103	100		
	Western (territory 11):								
34	100 miles	98	107	98	107	100	109	113	115
35	300 miles	99	108	99	108	98	109	109	115
36	500 miles	100	108	99	108	99	109	109	114

[1] Because of an inability to separate the Kentucky carriers' constant or fixed costs between those solely related to Kentucky and those common to the carriers' entire system operations, an expense basis of apportionment was used. This treatment, coupled with the very heavy density of traffic in Kentucky, results in some understatement of the fully distributed costs for the State of Kentucky and a small overstatement of these costs for the remainder of the South.

Referring to lines 7–9 and 22–24 of the table, it will be noted that the fully distributed costs for the South are generally a little lower

than for the East, including New England, but excluding the Pocahontas territory. The fully distributed costs in the West, on the other hand, lines 34–36, exceed those of the East by from 6 to 15 percent. The relatively high figure of 15 percent applicable on gondola- and hopper-car traffic is occasioned in part by the low average loading for gondola and hopper cars in the West, i. e., 43.0 tons as compared with 50.4 tons in the East. It will be noted that the combination of the costs for eastern and southern territories, exclusive of the Pocahontas territory, lines 31–33, results in costs for the combined territories which are equal to or slightly lower than those for the eastern territory when taken alone. The costs for the South would have to be approximately equal to those for the East to produce this result.

If the Pocahontas territory is included with the East, lines 13–15, the figures show approximately equal costs between the South and East on boxcar traffic, but differences favoring the East of from 5 to 9 percent on gondola- and hopper-car traffic. The costs for the West are 12 percent higher on boxcar traffic and from 15 to 22 percent higher on gondola- and hopper-car traffic than those for the East if the Pocahontas territory is included with the East.

Although relative costs are not shown separately for the western trunk-line, southwestern, and mountain-Pacific territories, the Edwards cost studies indicate that the differences between the costs shown for the total West and the costs for these three rate territories considered separately are relatively small.*

The costs in the Pocahontas and Kentucky territories are low because of the existence of a very heavy coal tonnage. A comparison of the costs for the East, excluding Pocahontas territory, lines 7–9, with the costs for the South, excluding Kentucky, lines 28–30, and based on assumed identical loads in each territory, show a slightly lower cost on boxcar traffic in the South but a higher cost by 5 percent on gondola-car traffic. These studies indicate that the costs for the State of Kentucky are lower than the costs for either the East or South.

The preceding comparisons have been based on boxcar traffic and gondola- and hopper-car traffic. Similar cost comparisons were made for several territories for stock-car traffic, refrigerator-car traffic, tank-car traffic, and flat-car traffic. Based on the actual average loads experienced for each class of equipment, the costs for the South are lower than those for the East (including New England but excluding Pocahontas) for traffic moving in all the foregoing classes of equipment. The costs fo the West are lower than those for the East as to

* Our head cost analyst verified two sets of exhibits: In the first the constant or fixed costs were apportioned on the basis of the out-of-pocket costs. As this procedure had the disadvantage of apportioning a relatively large amount of the constant expenses to shipments where the out-of-pocket expense is relatively high, the costs were restated apportioning the constant or fixed costs on a ton and ton-mile basis. The restatement shows costs only for the West taken as a whole.

stock-car traffic, refrigerator-car traffic, and flat car traffic, but higher for tank-car traffic.

Comparison based on carload traffic handled in all classes of equipment.—The following table provides territorial comparisons of indexes of the carload out-of-pocket and fully distributed costs (1939) for traffic moving distances of 100, 300, and 500 miles in all classes of equipment. This comparison is limited to certain territories as the unit costs for each class of equipment were not computed for all areas. The figures in columns (2) and (3) are computed for identical loads in each territory, i. e., boxcars, 25 tons; gondola and hopper cars, 50 tons; flat cars, 29 tons; stock cars, 11 tons; refrigerator cars, 14 tons; and tank cars, 30 tons. These loads approximate the United States averages for the classes of equipment named. The figures in columns (4) and (5) are computed for the actual average loads obtaining for each class of equipment in each territory. The weighting given to the costs for each class of equipment was based on the volume of traffic handled in each type of equipment in the United States. The terminal costs for each class of equipment were weighted for the total United States traffic handled in each class of equipment as measured by tons originated plus tons terminated. Line-haul costs by classes of equipment were weighted for the ton-miles of traffic handled in each class of equipment:

Relative territorial cost indexes (1939) for all carload traffic for hauls of 100, 300, and 500 miles

[United States average cost=100]

Line No.	Territory and miles (1)	Based on identical loads		Based on actual average loads	
		Out-of-pocket costs (2)	Fully distributed costs (3)	Out-of-pocket costs (4)	Fully distributed costs (5)
	East a including New England (territories 1, 2):				
1	100 miles	106	102	106	102
2	300 miles	105	102	106	102
3	500 miles	105	101	106	102
	Pocahontas (territory 5):				
4	100 miles	84	68	84	68
5	300 miles	82	67	83	67
6	500 miles	82	66	82	66
	Eastern including New England and Pocahontas (territories 1, 2, 5):				
7	300 miles		95		96
	Southern (territory 6):				
8	100 miles	92	94	96	96
9	300 miles	97	98	100	101
10	500 miles	98	100	102	102
	Western (territory 11):				
11	100 miles	98	108	103	110
12	300 miles	99	108	102	110
13	500 miles	99	108	102	110

It will be noted from the table, that, based on identical loads and hauls of 300 miles, the fully distributed costs in the South are 4 percent below those for the East, excluding the Pocahontas territory, and

3 percent above the East, including the Pocahontas territory. Based on the actual average loads the fully distributed costs for the South are 1 percent below those for the East, excluding the Pocahontas territory, and 6 percent above the costs for the East, including the Pocahontas territory. Based on identical loads, the fully distributed costs for the West are 6 percent above those for the East, excluding the Pocahontas territory, and 13 percent above those for the East, including the Pocahontas territory. Based on actual average loads the fully distributed costs for the West are 8 percent above those for the East, excluding the Pocahontas territory, and 15 percent above those for the East, including the Pocahontas territory.

The figures in this table were based on the costs for each class of equipment weighted for the volume of traffic handled in each type of equipment, taking the United States as a whole. The substitution of a weighting based on the territorial consist of traffic, i. e., the volume of traffic handled in each type of equipment in the respective territories, would make no significant difference in the comparisons shown in this table.

Cost of hauling the boxcar and gondola-car traffic of one territory in another territory.—Comparisons were made of the cost of hauling the entire consist of the traffic of one territory, at the average loads and unit costs applicable in that territory, with the cost of hauling the identical traffic at the average loads and unit costs obtaining in other territories. For example, a comparison was made of the expense of hauling the southern territory boxcar traffic a distance of 300 miles at the average load for each commodity using Southern unit costs, with the cost of hauling this identical traffic a distance of 300 miles at the average loads and unit costs obtaining in the Eastern territory (excluding New England and Pocahontas). Similar comparisons were made using the Eastern consist of boxcar traffic. Like studies were made also for gondola and hopper-car traffic. The results of these comparisons are shown in the following table:

Comparison of the cost of hauling southern and eastern boxcar and gondola-car traffic at the average loads and unit costs obtaining in each territory

Item	Ratio (percent) of southern costs to eastern costs using southern consist of traffic	Ratio (percent) of southern costs to eastern costs using eastern consist of traffic
(1)	(2)	(3)
Boxcar traffic		
Out-of-pocket costs	95	90
Fully distributed costs	100	97
Gondola- and hopper-car traffic		
Out-of-pocket costs	97	102
Fully distributed costs	102	106

The above comparisons are based on the cost figures for eastern territory No. 2 which excludes New England. If New England were included the percentage figures shown would be reduced by 1 or 2 percent.

Comparison of the costs of hauling the United States, eastern, southern, and western consists of traffic in each territory.—The following table provides a comparison based on the assumption that the total consist of traffic handled in each of several territories was hauled in the East, South, and West at the unit costs and average loads actually obtaining for each class of equipment in each of these territories. The figures do not include loss and damage and no attempt was made to develop the average loading by individual commodity classes, the composite average load by classes of equipment being used. The comparisons are not based on any given mileage, the aggregate costs being computed for the total revenue tons originated and terminated and the total revenue ton-miles by classes of equipment.

Comparison of the cost of hauling the United States, eastern, southern, and western consist of traffic in each of several territories at the unit costs and actual average loads (by classes of equipment) computed for such territories

[United States average cost=100]

Line No.	Consist of traffic (1)	If hauled at United States average costs (2)	If hauled at eastern [1] costs (3)	If hauled at southern costs (4)	If hauled at western costs (5)
1	United States consist	100	102	101	110
2	Eastern consist [1]	100	101	101	111
3	Southern consist	100	102	101	.....
4	Western consist	100	102	.....	108

[1] Eastern consist and costs include New England but exclude Pocahontas.

The costs in the South are approximately equal to or slightly lower than the costs for the East, excluding Pocahontas. The costs in the West are from 6 to 10 percent higher than those in the East, depending upon the consist of traffic used in making the comparisons.

Comparisons of the east, excluding Pocahontas, with the south, excluding Kentucky.—Cost comparisons for the East, excluding the Pocahontas territory, with the South, excluding the State of Kentucky, are shown separately for boxcars and gondola and hopper cars. Similar comparisons covering all classes of equipment could not be provided as the data for stock, refrigerator, tank, and flat cars were not available. However, as boxcars and gondola and hopper cars together account for about 90 percent of the total revenue ton-miles in the eastern district and about 83 percent of the total revenue ton-miles in the southern region, a comparison was made based on these two classes of equipment combined. The results should be reasonably indicative of the

over-all costs. It was assumed that the traffic was equally distributed between the two classes of equipment, i. e., the same weight was given to the cost per ton for traffic handled in boxcars as was given traffic handled in gondolas.[80] A load of 25 tons was used for the boxcars and a load of 50 tons for the gondola and hopper cars. The fully distributed cost per 100 pounds for a haul of 300 miles in boxcars is 16.2 cents in the East and 16.1 cents in the South, excluding the State of Kentucky. The cost for gondola and hopper cars is 13 cents in the East and 13.6 cents in the South, excluding the State of Kentucky. The weighted average cost for the South, excluding Kentucky, of 14.85 cents per 100 pounds exceeds the weighted-average cost for the East, excluding Pocahontas, of 14.60 cents by 1.7 percent. From this test it appears that the 1939 over-all costs for the South, excluding Kentucky, are but little different from the costs for the East, excluding the Pocahontas region.

Comparisons based on the territorial average costs per ton-mile adjusted for differences in lengths of haul and consist of traffic.—The southern carriers introduced territorial comparisons based on average net ton-mile costs adjusted for differences in the length of haul and the consist of the traffic. The studies covered a 10-year period, 1930–39. Our head cost analyst restated the data to remove the deficiencies which he believed were present in the studies.[81] The results of the restatements, based on the application of the southern unit costs and the eastern unit costs, respectively, to the eastern consist of traffic, show the costs for the South to be approximately 1 or 2 percent below those for the East, excluding the Pocahontas territory. Practically the same results are obtained by using the southern consist of traffic. The costs for the South are found to be 6 to 8 percent higher than the costs for the East, including the Pocahontas region. The eastern carriers introduced the same type of cost comparisons based, not on the years 1930–39, but on the 5 years, 1937–41, a period which reflects the increased traffic volume of 1940 and 1941. The costs for the South were found to be approximately 3 percent below those for the East, excluding Pocahontas, and approximately the same as those for the East, including the Pocahontas region.

The same basis of comparison, using the period 1930–39, shows the costs for the West to exceed those for the East, excluding the Pocahontas region, by from 5 to 7 percent, depending on the use of the

[80] In 1941, 44 percent of the tons originated and terminated in the eastern district consisted of anthracite, bituminous coal, and iron ore, while in the southern region, excluding Kentucky, the comparable figures were only 18.7 percent. While these commodities do not account for all the traffic moving in gondolas and hoppers it is sufficient to indicate that the use of an equal weight for boxcar costs as for gondola and hopper car costs slightly overstates the over-all costs for the South relative to that for the East which has the lower cost for gondola and hopper car traffic.

[81] The deficiencies are discussed hereinbelow in the description of cost studies introduced by others.

western or the eastern consist of traffic. A comparison with the East, including the Pocahontas region, and using the eastern consist of traffic, shows the Western costs to be higher by 18 percent. No similar comparison was made based on the period 1937–41.

Territorial comparisons of less-than-carload costs.—The following table provides territorial comparisons of the less-than-carload cost indexes based both on the less-than-carload out-of-pocket expenses and the out-of-pocket expenses plus those constant expenses which could be solely related to less-than-carload traffic. The less-than-carload costs do not include any of the constant or fixed costs common to all traffic. If these costs were included (but excluding passenger and less-than-carload deficits which were grouped with these constant expenses), the costs shown in columns (4) and (7) would be increased by approximately 5 to 7 percent. Deficits incurred in the handling of less-than-carload traffic based on the difference between less-than-carload revenues and the sum of the out-of-pocket costs, the constant costs solely related to less-than-carload traffic and the payments for collection and delivery service, are included in the carload fully distributed cost indexes.

Relative territorial cost indexes (1939) for less-than-carload traffic having hauls of 100, 300, and 500 miles, based, first, on an assumed identical load of 5 tons and, secondly, on the actual average load experienced in each territory in 1939

[United States average cost = 100]

Line No.	Territory	Assumed identical load			Actual average load		
		Load (tons)	Out-of-pocket cost	Out-of-pocket cost plus constant expenses solely related to less than carload	Load (tons)	Out-of-pocket cost	Out-of-pocket cost plus constant expenses solely related to less than carload
	(1)	(2)	(3)	(4)	(5)	(6)	(7)
	Eastern, including New England (territories 1, 2):						
1	100 miles	5	102	98	6.4	92	92
2	300 miles	5	105	101	6.4	94	95
3	500 miles	5	107	103	6.4	94	94
	Pocahontas (territory 5):						
4	100 miles	5	93	89	5.6	92	88
5	300 miles	5	90	89	5.6	89	87
6	500 miles	5	89	88	5.6	87	87
	Eastern, including New England and Pocahontas (territories 1, 2, 5):						
7	100 miles	5	101	97	(1)		
8	300 miles	5	103	100	(1)		
9	500 miles	5	104	101	(1)		
	Southern (territory 6):						
10	100 miles	5	87	84	5.5	86	84
11	300 miles	5	89	87	5.5	88	86
12	500 miles	5	90	88	5.5	89	87
	Western (territory 11):						
13	100 miles	5	108	114	4.3	122	123
14	300 miles	5	104	109	4.3	120	121
15	500 miles	5	102	107	4.3	120	120

[1] Average load not available.

This table indicates that the less-than-carload costs in the South are lower than those in the East while the less-than-carload costs in the West are higher than those in the East, particularly when the costs are based on the actual average less-than-carload loading experienced in the respective territories in 1939.

A witness for the official territory lines compared the rate scales for classes 1, 2, 3, and 4, subject to the 45-cent minimum rate for pick-up and delivery, with scales of costs developed from the Edwards cost studies for the East, including New England and Pocahontas, using average loads of 6.5, 8, 10, and 12 tons. Order No. 1 of the Office of Defense Transportation, requires, with certain exceptions, a minimum load of 10 tons of less-than-carload freight. In October 1942 the average loading was 10.6 tons. Whether this loading can be maintained after the war is problematical. The indications are that the railroads will endeavor to do so. The results of this comparison may be summarized as follows:

Cost level	6½ tons	8 tons	10 tons	12 tons
1. Out-of-pocket operating expenses, rents, and taxes	Below fourth-class rate scale.	Below fourth-class scale.	Below fourth-class scale.	Below fourth-class scale.
2. Total out-of-pocket including the 4-percent return.	Below fourth-class rate scale for hauls under 470 miles.			
3. Out-of-pocket operating expenses, rent, taxes, and pick-up and delivery.	Below third-class rate scale.	Below fourth-class scale for hauls under 200 miles (1).	Below third-class scale.	Below fourth-class scale except for for hauls of 225 to 380 miles.(2)
4. Total out-of-pocket including 4-percent return and pick-up and delivery.		Below third-class scale.	Below third-class scale except for hauls of 75 to 140 miles	Below third-class scale except for hauls of 95 to 120 miles.
5. Total out-of-pocket and solely related expenses.				
6. Total out-of-pocket, solely related expenses plus pick-up and delivery.	Below second-class rate scales except for hauls of 25 to 90 miles and under first-class rates except for hauls of 25 to 45 miles.	Below third-class scale except for hauls of 40 to 200 miles. Below second-class scale except for hauls between 40 and 70 miles.		

(1) Closely approximates fourth-class rate scale for longer hauls.
(2) Closely approximates fourth-class rate scale for distances in excess of 225 miles.

The rate scales in each instance include pick-up and delivery service, whereas only three of the cost bases include the cost of pick-up and delivery. The average cost of pick-up and delivery was computed by dividing the total pick-up and delivery expenses by the total less-than-carload 100 pounds carried. The resulting average was 7.68 cents per 100 pounds. Some of the less-than-carload traffic does not receive a pick-up and delivery service. Class-rate traffic moves over routes that are probably 10-percent or more longer than the short line on which the class-rate scales are based. If the pick-up and delivery payments and allowances were spread only over the traffic that

receives collection and delivery service the cost of such service would be higher than 7.68 cents per 100 pounds. If allowance were made for circuity the line-haul costs would be increased by at least 10 percent. Payment of loss and damage claims was not included in any of these cost bases.

It will be observed that with a 6.5-ton load only the first- and second-class rates are above the cost basis No. 6, total of the out-of-pocket and solely related expenses plus pick-up and delivery, and that for certain distances they are not above this basis of cost. A test which was made in 1939 shows that 69 percent of the less-than-carload revenues in official territory came from traffic rated 65 percent of first class or higher. The analysis of less-than-carload traffic for the week of September 8 to 14, 1939, previously referred to, shows that the weighted-average class rate on intraterritorial traffic in official territory was 65.9 percent of first class, and on traffic originated, and terminated in official territory 66.6 and 66.1 percent of first class, respectively. Second-, third-, and fourth-class rates in official territory are 85, 70, and 50 percent of first class, respectively; rule 26 is 55 percent of first class.

The following table shows the deficits incurred in handling less-than-carload traffic in 1939:

Less-than-carload comparisons of costs, revenues, and deficits

Line No.	Item	Eastern (territories 1 and 2)	Pocahontas (territory 5)	Southern (territory 6)	Western (territory 11)	United States (territory 12)
	(1)	(2)	(3)	(4)	(5)	(6)
1	Out-of-pocket cost including 4 percent return on value	$96,746,492	$6,987,291	$35,375,667	$88,912,501	$226,818,622
2	Constant expenses solely related to less than carload	25,824,542	1,578,871	8,425,605	24,592,128	60,421,143
3	Constant expenses solely related to less than carload, adjusted [1]	17,938,694	1,186,389	5,911,953	16,484,022	41,518,937
4	Collection and delivery payments and allowances	10,737,873	632,581	3,649,912	9,641,496	24,662,162
5	Out-of-pocket cost plus total solely related expenses plus collection and delivery (lines 1, 2, 4)	133,308,907	9,199,043	47,451,184	123,146,215	311,901,927
6	Out-of-pocket cost plus adjusted solely related expenses plus collection and delivery (lines 1, 3, 4)	125,421,059	8,806,541	44,937,432	115,038,109	292,999,721
7	Less-than-carload revenues	107,455,756	8,742,308	46,635,725	88,797,938	251,331,727
	Less-than-carload income or deficit					
8	Basis of total solely related expenses plus c. and d. (line 7 minus line 5)	[2] 26,153,151	[2] 456,735	[2] 815,459	[2] 34,348,277	[2] 60,570,209
9	Basis of adjusted solely related expenses plus c. and d. (line 7 minus line 6)	[2] 18,265,303	[2] 64,233	+1,698,293	[2] 26,240,171	[2] 41,667,994

[1] For purposes of territorial comparison it is assumed that 100 percent of the constant portion of terminal operating expenses, rents, and taxes assigned and apportioned between carload and less-than-carload services are separable between the two services. Actually, however, some portion of these expenses are common to all services and would continue if less-than-carload service were discontinued. If we adjust for this fact by reducing by 50 percent the constant station clerical expenses as solely related to less than carload, we arrive at the adjusted figures shown above.

[2] Deficit.

The best showing is in southern territory.

Comment on the territorial differences in costs.—A significant feature of all preceding comparisons is that the out-of-pocket costs (i. e., the directly assignable expenses) in the South and West are frequently as low as, or even lower than the out-of-pocket costs in the East. This is despite the fact that a uniform percentage of each expense item was taken in the East, South, and West in computing the out-of-pocket costs, although the analysis of the out-of-pocket costs by territories indicated that, if anything, a somewhat larger percentage of the expenses in the East is variable with added traffic than is true of the South and West.[52] The difference in the fully distributed costs between the East and the West is largely in the constant or fixed expenses and the passenger and less-than-carload deficits.

Data of record indicate that the increase in freight traffic volume received by the carriers subsequent to the year 1939 has served to reduce the unit costs of transportation in the South and West in a proportionately greater degree than in the East. This results from the fact noted above that a larger proportion of the carload freight revenue needs in the South and West consists of the constant or fixed costs than is true in the East, and these expenses do not increase with added freight traffic. For example, the ton-miles of revenue freight carried in 1941 as compared with 1939 increased by 43 percent in the eastern (including New England) 27 percent in the Pocahontas, 44 percent in the southern, and 46 percent in the western territories. The cost per revenue ton-mile decreased by only about 5 percent in the East and the Pocahontas territories as compared with decreases of something in excess of 10 percent in the South and West.

Criticisms of the Edwards cost studies.—Carriers and shippers offered many criticisms of the Edwards cost studies. Some were directed to such items as errors in computation, erroneous separations of running and train switching expenses, the exclusion of intra-terminal switch cars, and the count of less-than-carload and carload tonnage handled. Corrections for several items of this character were made and introduced in the record.

Other criticisms were directed to the apportionment factors used in the formula, such as the relative weight from a cost of service standpoint, given to each class of switching service; the car-day allowances for loading, unloading, and switching of freight-train cars; the separation of station clerical expenses between carload and less-than-carload; and the ratio of empty to loaded mileage by classes of equipment. In support of the factors used, our head cost analyst referred to various

[52] The reason apparently lies in the fact that the East, with its higher traffic density, is closer to the maximum capacity of the plant than is true in the other districts and hence the influence of added traffic on costs is here greater.

special studies made for the purpose of this, and other cases, and to his analysis of data of a similar character introduced by carriers in other proceedings. He also introduced a series of tables showing the effect on the cost scales of various possible variations in the factors used, the result in most cases being but a negligible shift in the expenses from one type of car to another type of car, or from one length of haul to another length of haul. This followed from the fact that most of the apportionment factors, while reflecting the relative cost for one class of work relative to another class of work, had no influence on the aggregate costs. Allowance for empty miles by classes of equipment was reconciled with the carriers' total empty miles reported by regions for all classes of equipment. Also reconciled within a very close margin were the costs developed in the cost scales and the carriers' total known expenses by regions and districts. The reconciliation appears below:

Line No.	Territory	Aggregate expenses, increased for a 4-percent return computed by applying cost to traffic handled (1939)	Actual expenses as reported by carriers increased for a 4-percent return (1939)	Ratio (percent) of computed expenses to actual expenses
	(1)	(2)	(3)	(4)
1	Eastern	$1,426,950,260	$1,451,484,949	98.3
2	Pocahontas	183,076,590	185,387,990	98.8
3	Southern	450,448,155	449,001,663	100.3
4	Western	1,382,549,982	1,395,188,845	99.1
5	United States (lines 1-4)	3,443,024,987	3,481,063,447	98.9

Judging from the above table, whatever errors may exist in the Edwards studies, they have not had the effect of overstating or understating the carriers' costs in the aggregate to any appreciable degree.

For the purpose of the foregoing reconciliation, costs were developed by individual commodity classes and summarized, the constant costs (as explained hereinabove) being distributed pro rata on a ton and ton-mile basis disregarding the element of value of service. The resulting costs by commodity classes were criticized by the carriers on the ground that the ratios of freight revenues to fully distributed costs on some commodities in the South, such as peaches and livestock (cattle and calves, single deck), show them to be more profitable than coal. The result was stated to be contrary to the generally accepted experience. The ratios referred to reflect the compensatory character of the revenues when reduced to a per ton or per ton-mile basis. For example, the revenue per ton-mile for peaches, livestock, and coal in the South was shown to be 1.95 cents, 2.80 cents, and 0.59 cents, respectively. Ton-mile for ton-mile the contribution of peaches and livestock to the con-

stant costs is greater than that realized on coal. On the other hand, when the relative volume of the traffic is taken into consideration, the studies indicate that the aggregate contribution made by peaches or livestock to the carriers' fixed costs and return, i. e., the excess of total revenue over out-of-pocket costs, constitutes only about 1 or 2 percent of that realized from the coal traffic.

A similar example was offered based on the transportation of watermelons and coal in the Pocahontas region. The revenues are 1.32 cents and 0.54 cent per ton-mile and the contributions above out-of-pocket costs are 0.51 and 0.25 cent per ton-mile, respectively. Based on the volume of watermelon and coal traffic the contribution to fixed costs and profits made by watermelons approximates 53 thousand dollars as compared to approximately 75 million dollars for bituminous coal. Viewed in this light, the cost studies support the generally accepted view as to the profitability of coal traffic.

Criticism was made that the territorial average costs for gondola- and hopper-car traffic found for the western territory were not applicable to the ore tonnage handled by the Great Northern or the Duluth, Missabe and Iron Range Railroad. This is true. On the other hand, the intent of the cost study was to reflect territorial average operating conditions, including main-line and branch-line operations, through train and way train operations, operations of lines of heavy-traffic density and lines of light-traffic density, and the switching performed at large terminals and small terminals. It is obvious that some lines in virtue of their topography or traffic density will have costs which are lower or higher than the territorial average. The Duluth, Missabe and Iron Range and the ore-handling sections of the Great Northern are obviously in this category. The fact that the territorial average costs as developed do not exactly fit such operations does not invalidate the costs for the purpose for which they were developed. The exclusion of the Great Northern has a negligible effect upon the territorial average costs.

Criticism was made of the rate-making values used, the figures being based on data furnished by our Bureau of Valuation. This criticism has little weight, however, as the relation between our Bureau's rate-making value and the carriers' book investment differed little by territories. The comparisons of relative territorial costs would be little affected regardless of whose valuation figures were used.

Criticism was made of the carrier and territorial groupings used in the Edwards studies. Our head cost analyst subsequently reworked the costs to show all combinations of regions and areas requested by respondents to the proceeding.

Territorial cost studies introduced by others.—Cost data dealings with the relative territorial costs were introduced by witnesses for the southern governors, the southern carriers, the State of New York, and the Kansas State Corporation Commission. Exhibits introduced by the southern governors provided an analysis of the terminal and line-haul costs appearing in the Edwards studies showing variations in the unit costs among the individual railroads in each district. Maximum, minimum, and average costs were presented. The exhibits also contained statistical data showing the relative importance of various commodities in each of the several regions, average loads, traffic densities by regions and individual carriers, et cetera. The purport of the data was to support the thesis that costs are lower in the South than in the East.

The southern carriers introduced cost comparisons for the South and East, both including and excluding the Pocahontas territory, based on the average net ton-mile costs in each region adjusted for differences in the length of haul and the consist of traffic. The studies covered the 10-year period, 1930–39. These studies are subject to some criticisms. The data relied to a substantial degree upon the separation of expenses between line-haul and terminal developed in the Edwards cost studies. However, the southern carriers made a drastic departure from the Edwards formula in that it grouped with the terminal expenses all of the fixed or constant expenses which were attributed by the Edwards study to the line-haul operation and distributed on a ton-mile basis. For example, whereas the Edwards study developed that the costs for the East were 24-percent independent of distance and 76 percent variable with distance, the southern carriers changed this to 53 percent independent of the distance and 47 percent variable with distance. The effect was to eliminate from consideration, as to substantial part of the expenses, the longer average haul obtaining in the South compared to the East. Other factors subject to criticism relate to the average haul per ton per railroad which was used in lieu of the average haul per shipment upon which the formula was based, and the composition of traffic assigned to gondola and hopper cars. Our head cost analyst restated these exhibits and expanded them to include comparisons for the 10-year period between the eastern and western carriers. The results of such restatements have been shown above. The eastern carriers introduced exhibits restating the southern carriers' studies, but using the 5-year period 1937–41. The figures showed the costs for the South to be 98.2 percent of those for the East, including Pocahontas, and 91.3 percent of the costs for the East, excluding Pocahontas. Our head cost analyst restated the latter exhibits to correct what he believed to be minor errors of application. The result changed the foregoing figures to read 99.4 and 91.9 percent, respectively.

Witness for the State of New York introduced comparisons of the costs per revenue ton-mile for various groups of railroads in the South and East. Such comparisons of revenue ton-mile costs, however, are subject to the following criticisms: No separation was made between line and terminal with the result that, other factors being equal, the territory having the longest average haul per shipment would inevitably have the lowest cost per revenue ton-mile, the terminal expenses being spread over more ton-miles. No separation was made between classes of equipment, the low cost per revenue ton-mile for heavy loading coal traffic being combined on a weighted-average basis with the higher ton-mile cost for manufactured products. Other factors being equal, the region having the greatest proportion of coal traffic would, under such a procedure, show the lowest cost. No effort was made to accumulate the cost on the basis of homogeneous service units required in the handling of each class of traffic in each class of equipment, such as was accomplished in the Edwards studies.

The Kansas State Corporation Commission introduced cost and statistical comparisons purporting to show that the costs in southern Missouri were lower than those of the Kansas railways, and that the costs for the Kansas railways in turn were lower than those in northern Missouri. Reliance was placed on various statistical ratios, including freight-operating rations, freight expense per locomotive ton-mile, freight expense per revenue ton-mile, ratio of revenue freight ton-miles to gross ton-miles, ratio of nonrevenue freight to revenue freight, freight expense per gross ton-mile, average carloading, and ratio of empty car-miles to loaded car-miles. It was found that six out of the eight ratios favored southern Missouri as compared with northern Missouri, the conclusion being reached that southern Missouri freight costs were lower than northern Missouri costs. Five of the eight ratios favored southern Missouri as compared with Kansas, the conclusion being reached that southern Missouri railways had a lower relative freight cost than Kansas railways. Some of these ratios such as the operating ratio, may reflect not merely relative costs but differences in rate levels and differences in the consist of traffic. No attempt was made to adjust for differences in the average length of haul through a separation of the terminal expenses from the line-haul expenses, nor were differences in the consist of traffic recognized by developing costs by classes of equipment. The differences in some of the ratios are relatively small. For example, the freight expense per gross ton-mile was found to be 0.245 cent in Kansas, 0.251 cent in northern Missouri and 0.258 cent in southern Missouri. The costs per revenue ton-mile were 0.785 cent in Kansas, 0.823 cent in northern Missouri, and 0.763 cent in southern Missouri. While many of the ratios favored southern Missouri, the margin in many cases is very small. Relatively small

segments of the operations of many of the carriers were included in the study, and the separation of the expenses for these segments is not wholly reliable. From the data of record, it is not possible to draw any specific conclusions that the costs in one or other of the areas named exceed the costs in the remaining areas. At most, the conclusion may be drawn that the costs in the respective areas do not vary substantially.

Summary.—The various comparisons of territorial costs reviewed hereinabove show that there is little significant difference in the cost of furnishing transportation in the South as compared to the East, excluding the Pocahontas territory. The figures both for the year 1939 and the period 1930–39 indicate that, taken as a whole, the costs in the South are equal to or a little lower than those in the East. If the period 1937–41 is used, the costs in the South are substantially lower than those in the East.

If the Pocahontas territory is included with the East, the costs for the South, based on the year 1939, are between 3 and 6 percent above those for the East. This differential would be increased to something between 6 and 8 percent if the years 1930–39 were used, a period including years of depression traffic. On the other hand, this differential would be eliminated if the 5-year period, 1937–41, were used. The unit costs of rendering transportation service in the South increase more rapidly with declining traffic volume and decrease more rapidly with increased traffic volume than is true for the East. On the basis of the 1939 figures, the costs for the East, including New England but excluding Pocahontas, are approximately the same as the costs for the South, excluding the State of Kentucky.

Comparisons based on the year 1939 and the period 1930–39 show the over-all cost of rendering transportation service in the western territory to be between 5 and 10 percent higher than in the East, excluding the Pocahontas territory. If the year 1941 were used, this difference would be reduced to 5 percent or less. A comparison based on the inclusion of the Pocahontas territory with the eastern roads for the period 1930–39 shows a difference of 18 percent. Based on the year 1939 the difference shrinks to approximately 15 percent. Based on the year 1941 it would be reduced to something in the neighborhood of 10 percent.

The relative territorial costs of less-than-carload traffic, for a haul of 500 miles, based on actual average loads are 5 to 8 percent higher in the East, including New England but excluding Pocahontas, than in the South. Costs in the West are 27 percent higher than in the East, including New England but excluding Pocahontas. Less-than-carload traffic as a whole, is carried at a deficit in all territories, except possibly in the South.

SOUTHERN TERRITORY

Systems and levels of class rates, South versus East.—The class-rate structures of the South and official territory differ from each other in four major respects: (1) In the levels of the scales, (2) in the progressions of the scales, (3) in the relations of the several component scales which make up the class-rate system, and (4) in the governing freight classifications. The difficulties involved in any attempt to compare the average levels of these two rate structures, as well as the others, have been pointed out. As previously stated, the first-class rates in the South average about 37.7 percent higher than the first-class rates in official territory. The K–2 scale of class rates within the South grades up with distance more rapidly than the official scale. However, for distances up to 190 miles the two scales have been brought more closely together by voluntary action of the southern carriers on July 7, 1941.

A comparison of the first-class rates in the K–2 scale, with those in the modified southern scale, and with those in the eastern or official scale, for distances up to 190 miles is shown below:

All rates shown include the Ex Parte No. 123 increase of 10 percent

Miles	K-2 scale	Modified K-2 scale	Difference	Eastern official scale	Modified southern scale, percent of eastern scale
5	37	40	+3	33	121.2
10	40	40		34	117.6
15	43	42	-1	36	116.6
20	43	44	+1	37	118.9
25	46	49	+2	40	115
30	51	46	-5	41	117
35	58	54	-3	43	118.6
40	56	53	-3	44	120.4
45	59	55	-4	46	119.6
50	62	57	-5	47	121.2
55	65	59	-6	50	118
60	67	62	-5	51	121.5
65	70	64	-6	53	120.7
70	73	66	-7	54	122.2
75	73	66	-7	56	121.4
80	77	70	-7	57	122.8
85	79	73	-6	58	125.8
90	80	75	-5	59	127.1
95	81	77	-4	61	126.2
100	84	79	-5	62	127.4
110	87	83	-4	64	129.6
120	90	86	-4	66	130.3
130	94	89	-5	68	130.8
140	97	92	-5	70	131.4
150	100	96	-4	73	131.5
160	103	99	-4	74	133.7
170	106	102	-4	76	134.2
180	108	106	-2	77	137.6
190	110	109	-1	79	137.9

Lack of uniform ratings in relation to first class produces many differences in rates as between the South and official territory. The extent to which items are rated differently, in relation to first class, in the southern and the official classifications, is indicated in the following table:

	Number of items				Percent of total
	Less than carload	Any quantity	Carload	Total	
Southern and official ratings the same	9,253	66	4,937	14,256	69.8
Southern ratings higher than official	21	0	4,021	4,042	19.8
Southern ratings lower than official	771	13	1,344	2,128	10.4
Total	10,045	79	10,302	20,426	

It will be noted that nearly 70 percent of the ratings are the same, that of the 79 any-quantity ratings 13 are lower, and none are higher, in the southern classification, and that of the 10,045 less-than-carload ratings 771 are lower, and only 21 are higher, in the southern classification; but that there are 4,021 higher carload ratings in the South than in official territory, as compared with only 1,344 lower such ratings in the South. Considering the ratings as a whole, 19.8 percent are higher, and 10.4 percent are lower in the southern classification than in the official classification. In many instances the rates based on the lower southern ratings are higher than those produced by the higher official classification ratings, because of the higher level of the southern class rates.

Fifth class is generally considered the most important carload class in official territory. Fifth class is 35 percent of first class in official territory and 45 percent of first class in the South. There are 2,184 ratings of fifth class or 35 percent of first class in official territory. These same items are rated in southern classification, or exceptions thereto, from 17.5 to 55 percent of first class, and produce rates in the South ranging from 70 to 220 percent of the rates in official territory. The weighted average (weighted according to the number of ratings) is 155 percent.

RELATIVE LEVELS OF COMMODITY RATES, SOUTH VERSUS EAST

In many instances, commodity rates in the South are lower than commodity rates on like traffic in official territory. There is no comprehensive showing as to the general level of commodity rates in the South as compared with that in official territory. The record does reveal, however, that in the following instances commodity rates in the South are lower than rates on the same commodity in official territory:

Brick, building and facing.—The rates under the distance scale maintained in southern territory are the same for a few distance blocks as those under the central territory scale, and are lower for all other distances than those under the latter scale. In all instances the southern-scale rates are lower than those under the trunk-line scale. For example, for 100 miles, the southern rate is $1.60 per net ton, the

central-territory rate is $1.85, and the trunk-line rate is $2.15; for 460 miles the southern rate is $3.80, the central territory rate is also $3.80, and the trunk-line rate is $4.79; and for 1,000 miles the southern rate is $5.80, the central territory rate is $6.27, and the trunk-line rate is $7.59. The average rate on brick from Canton, Ohio, to 17 points in eastern trunk-line territory for an average distance of 446.6 miles is $4.66, while the rate for that distance in southern territory is $3.60; and the average rate from Pittsburgh, Pa., to the same destinations in trunk-line territory for an average distance of 370.9 miles is $4.01, while the rate for that distance in the South is $3.40. The southern scale was prescribed in *Brick and Clay Products in the South*, 88 I. C. C. 543, for distances of 1,000 miles and less. The central territory and trunk-line scales were prescribed in *National Paving Brick Mfrs. Assn.* v. *Alabama & V. Ry. Co.*, 68 I. C. C. 213, for distances of 150 miles and less. The carriers have voluntarily extended the latter scales to 1,000 miles.

Fertilizer and fertilizer materials.—The present southern scale is lower for all distances than the scale prescribed in *Eastern Fertilizer Cases*, 198 I. C. C. 483, 203 I. C. C. 787, on basis of 22.5 percent of first class between points in trunk-line territory; and the southern scale is lower for distances of 680 miles and less than the scale prescribed in the report on further hearing in *Ohio Farm Bureau Federation* v. *Ahnapee & W. Ry. Co.*, 146 I. C. C. 419, for application between points in central territory. However, for some (not all) distances greater than 680 miles up to 800 miles, the maximum distance under the latter scale, that scale is slightly lower than the southern scale. For distances of 300 miles and less, the southern scale is much lower than either the central-territory scale or the trunk-line scale. For example, for 100 miles the southern scale rate is $1.35 per net ton, the central territory scale rate $2.40, and the trunk-line scale rate $2.80; for 200 miles the southern rate is $2.35, the central territory rate $3.20, and the trunk-line rate $3.60; and for 380 miles the southern rate is $4.45, the central territory rate $4.40, and the trunk-line rate $4.80. The trunk-line and central-territory scales are subject to a minimum of 40,000 pounds, while the southern scale is subject to a minimum of 60,000 pounds. For all distances, the present southern scale is substantially lower than the scale we prescribed in *Fertilizers Between Southern Points*, 113 I. C. C. 389, for application between points in southern territory in connection with a minimum of 40,000 pounds. The rates under the present southern scale for distances of 300 miles and less were established to meet motor-truck competition.

Coke.—In the report on reconsideration in *Coke from Alabama and Tennessee to Central Territory*, 215 I. C. C. 384, we prescribed on coke, in carloads, from Birmingham, Ala., Chattanooga, Tenn., and

points in Wise County, Va., to destinations in central and Illinois territories a distance scale the same as the scale designated the column 2 scale which had been prescribed in *Coke between Points in Central and Illinois Territories*, 194 I. C. C. 640, for application on like traffic within central and Illinois territories. We said, in the report on reconsideration in the first-cited proceeding (pages 385, 386):

> The column 2 rates are now applicable between points in central territory, with a few exceptions mentioned in the original report. The rates from Chattanooga, Birmingham, and Wise County, Va., to southern destinations are in certain instances slightly higher, and in others lower, than they would be if made strictly on the column 2 basis, but they average about the same. From Chattanooga and Birmingham combined to all destinations having a population of 5,000 or more, both the present and the column 2 rates average $2.96 per ton. * * * Coke is among the commodities taking commodity rates in the South approximately the same as those in official territory.

That scale is substantially lower than the scale previously prescribed for application within trunk-line territory and from that territory to New England. The latter scale was prescribed originally in *Seaboard By-Product Coke Co.* v. *Director General*, 62 I. C. C. 317, for distances of 600 miles and less from Seaboard, N. J., to destinations in New England, New York, and New Jersey. It was later prescribed in *Hudson Valley Coke & Products Corp.* v. *N. Y., N. H. & H. R. Co.*, 129 I. C. C. 472, for application from Troy, N. Y., to destinations in New England.[33]

Lime.—For all distances the southern scale on lime is substantially lower than the trunk-line scale, and, for distances of 380 miles and more, the southern scale is lower than the central-territory scale. For distances less than 380 miles, however, the southern scale is higher than the central territory scale. For example, for 100 miles, the southern scale rate is $2.64 per net ton, the central territory rate is $2.60, and the trunk-line rate is $2.75; for 380 miles the southern rate is $3.96, the central territory rate is $4, and the trunk-line rate is $4.40; and for 700 miles the southern rate is $4.84, the central territory rate is $5, and the trunk-line rate is $5.61. The southern scale was approved originally in *Lime Between Southern Points*, 129 I. C. C. 635, for distances of 800 miles and less; and in *Dann-Gerow Co., Inc.*, v. *Atlantic Coast Line R. Co.*, 172 I. C. C. 482, that scale was extended to 1,400 miles. The central territory scale was prescribed in *Eastern Lime Mfrs. Traffic Bureau* v. *Akron & B. B. R. Co.*, 112 I. C. C. 7, and in *Lime to Central Territory*, 203 I. C. C. 407, was approved for application from Buffalo, N. Y., to central territory. The trunk-line scale,

[33] An Alabama intrastate scale that is lower than even the column 2 interstate scale maintained between points in central territory applies on coke when for furnace use between certain points in Alabama.

made 110 percent of the central territory scale, was approved in *Ohio Lime Mfrs.* v. *Pennsylvania R. Co.*, 214 I. C. C. 417. A scale made 120 percent of the central territory scale was approved in *Lime from and to New England*, 222 I. C. C. 665, for application from, to, and within New England.

Logs.—In *Indiana Public Service Commission* v. *Ann Arbor R. Co.*, 85 I. C. C. 533, we prescribed on logs, in carloads, between points in central territory, maximum reasonable rates equivalent to 65 percent of the sixth-class rates contemporaneously in effect between the same points. That basis is now in effect generally between points in central territory and points in trunk-line territory, as 18 percent of first class, by reason of exceptions to the official classification.

A number of distance scales apply on logs between points in southern territory. The lowest of these scales which we have prescribed is the so-called Pierpont scale, which is a single-line scale that was prescribed originally in *Pierpont Mfg. Co.* v. *Southern Ry. Co.*, 50 I. C. C. 81, and, subjected to the general rate changes, provides local and transit rates between points on the lines of certain standard railroads in northern Florida, eastern Alabama, Georgia, South Carolina, North Carolina, and southern Virginia. This single-line scale is substantially lower than the general basis hereinbefore stated applicable in official territory for both single-line and joint-line hauls. For example, for 200 miles the Pierpont scale rate is 9.5 cents per 100 pounds while the official territory rate is 14 cents; for 500 miles these rates are 18 cents and 22 cents, respectively; for 800 miles they are 24 cents and 29 cents; and for 1,000 miles, 29 and 33 cents.

In *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co.*, 178 I. C. C. 671, we prescribed resonable single-line and joint-line distance scales of rates on logs, in carloads, from points in southern territory, not including points in Florida south of the line of the Seaboard Air Line Railway Company from Jacksonville to River Junction, to certain points in Tennessee for distances to and including 800 miles. The prescribed single-line rates were 2.5 cents per 100 pounds lower than the corresponding joint-line rates. The proceeding was comprehensive in its scope and resulted in a general readjustment of rates over an extensive territory. The rates under the joint-line scale therein prescribed, as modified by the subsequent general rate changes, are in most instances the same as the official territory rates for like distances and, in other instances, are either 1 cent higher or lower than the corresponding official territory rates. With respect to the Pierpont scale, prescription of which was sought in the proceeding last cited, we said, at page 682:

> This record indicates that the Pierpont scale had its origin in rate structures designed (1) to facilitate the clearing of land for farming purposes, (2) to move

logs from regions in which the preponderance of the timber is softwood, and (3) to fit the comparatively favorable operating conditions existing in the level coastal areas in the Southeast. It would be manifestly unjust to require the extension of such a scale into the region here considered, throughout which the reverse of the above-mentioned conditions largely obtains.

The distance-scale basis prescribed in *Farris Hardwood Lbr. Co.* v. *Louisville & N. R. Co.*, *supra*, was subsequently prescribed in a number of other proceedings for application between points in other sections of southern territory, and to points in that territory from origins in official territory. See *Pulaski Veneer Corp.* v. *Atlantic & Y. Ry. Co.*, 258 I. C. C. 706, and 259 I. C. C. 313, and the decisions therein cited.

Lumber.—The southern scale on lumber is lower than the official scale except that for a few of the longer distances the rates under the two scales are the same. For 50 miles the southern rate is 7 cents per 100 pounds, the official rate 11 cents; for 100 miles the southern rate is 9.5 cents, the official rate 14 cents; for 200 miles these rates are 14.5 cents and 18 cents, respectively; for 300 miles they are 19 cents and 22 cents; for 400 miles they are 24 and 25 cents, respectively; for 600 miles they are each 30 cents; and for distances of 900 miles (the maximum distance under the southern scale) and over 600 miles the southern rates are the same as, or 1 cent less than, the corresponding rates under the official scale. Each of these scales is lower than the scale prescribed by us for application in the affected territory. In *Lumber between Points in Official Territory*, 214 I. C. C. 493, we prescribed rates on lumber between points in official territory on the basis of 25 percent of first class. Since that decision the railroads have voluntarily established rates on lumber in official territory 22.5 percent of first class. In *Adams-Bank Lbr. Co.* v. *Aberdeen & R. R. Co.*, 157 I. C. C. 280, we approved a general revision of rates on lumber between points in southern territory based on a distance scale. That scale was substantially higher than the scale now maintained voluntarily within southern territory.

Pig iron.—Specific rates on pig iron from Birmingham, Ala., to consuming points in southern territory are much lower than rates on pig iron for like distances from blast-furnace points in official territory to consuming points in official territory. For example, the rate from Pittsburgh to Buffalo, 232 miles, is $3.61 per long ton, whereas the rate from Birmingham, to Macon, Ga., 247 miles, is only $2.61; and the rate from Birmingham to Roanoke, Va., 535 miles, is $4.65, while the rate from Pittsburgh to Evansville, Ind., 525 miles, is $6.38.

Pulpwood.—The southern scale on pulpwood is substantially lower than the scale applicable within trunk-line territory. The southern scale applies on both single-line and joint-line movements, whereas separate scales for such movements are maintained within trunk-line

territory. For 200 miles the southern scale rate is 6.575 cents per 100 pounds, the trunk-line rate for single-line hauls is 11 cents, and the trunk-line rate for joint-line hauls is 12 cents. For 660 miles, the southern rate is 15 cents, the trunk-line single-line rate is 22 cents, and the trunk-line joint-line rate is 23 cents. The trunk-line scales were prescribed originally in *West Virginia Pulp & Paper Co.* v. *Baltimore & O. R. Co.*, 104 I. C. C. 495, for application from the District of Columbia and points in Maryland, Virginia, and West Virginia to interstate destinations in Delaware, Maryland, Pennsylvania, and West Virginia. The southern scale is on a voluntary basis.

Sand, gravel, crushed stone, and slag.—The southern scale is generally lower than any of the three official territory scales, but in some instances is the same as one of the latter scales, the so-called West Penn scale, which was prescribed in *Pennsylvania Sand & Gravel Producers Assn.* v. *B. & O. R. Co.*, 104 I. C. C. 717, for application from points in western Pennsylvania to destinations in Ohio, West Virginia, and New York. For distances of 35 to 170 miles, inclusive, the southern scale is the same as the West Penn scale; but for distances less than 35 miles and those over 170 miles to 200 miles, inclusive (the maximum distance under the West Penn scale being 200 miles), the southern scale is lower than the West Penn scale. For all distances the southern scale is lower either than the scale prescribed in *Rates on Crushed Stone, Gravel, Sand, and Slag in Ohio*, 191 I. C. C. 206, for application on crushed stone from Hillsville, Shaw Junction, and Walford, Pa., and on slag from Midland and Sharpsville, Pa., and Weirton, W. Va., to destinations in Ohio; or than the so-called Buckland scale originally prescribed in *Buckland* v. *Boston & A. R.*, 139 I. C. C. 88, for application on slag from Bethlehem and Hokendauqua, Pa., to points in New Jersey, New York, and New England and found reasonable in numerous other proceedings for application between other points in trunk-line territory. The southern scale is lower than the single-line and joint-line scales prescribed in *Rates on Chert, Clay, Sand, and Gravel*, 122 I. C. C. 133, for application on sand, gravel, crushed stone, and slag from Montgomery, Ala., and Chattanooga, Tenn., to destinations in Georgia and Mississippi, between points in Georgia, and between points in Georgia and other points in southern territory except points in Florida.

Iron or steel scrap.—In official territory the rates on iron or steel scrap are on various bases. In *Newport News Shipbuilding & Dry Dock Co.* v. *B. & O. R. Co.*, 160 I. C. C. 620, division 3 prescribed from Newport News, Va., to destinations in Maryland, Delaware, New Jersey, and eastern Pennsylvania, and from Newport News, Norfolk, Portsmouth, and Richmond, Va., to Baltimore, Md., a basis of rates on iron

or steel scrap of 70 percent of the basic scale of rates on iron and steel which we had found reasonable in *Iron and Steel Articles*, 155 I. C. C. 517. Following the Newport News case, we prescribed this 70-percent basis as reasonable for application between various points in official territory. See *Summer & Co.* v. *Erie R. Co.*, 255 I. C. C. 475, and 262 I. C. C. 43 for list of cases. Two scales, based on alternative minima of 50,000 and 80,000 pounds, are in effect on iron or steel scrap in southern territory for distances of 1,500 miles and less. The higher southern scale, subject to the 50,000-pound minimum, provides lower rates than the 70-percent basis prescribed in official territory for distances from 70 to 480 miles, inclusive, but higher rates for distances less than 60 miles and greater than 500 miles. The southern scale subject to the 80,000-pound minimum provides lower, and in most instances substantially lower, rates than the 70-percent basis for distances from 40 to 1,000 miles, inclusive. The two southern scales were established pursuant to fourth-section relief granted in *Scrap Iron and Scrap Steel in Southern Territory*, 182 I. C. C. 175.

Sulphuric acid.—The southern scale on sulphuric acid, in tank cars, is substantially lower than the scale applicable in official territory, which was prescribed in *Bertha Mineral Co.* v. *Baltimore & O. R. Co.*, 112 I. C. C. 754, for application on like traffic from Tiltonville, Ohio, to points in the Wheeling, W. Va., Youngstown, Ohio, and Pittsburgh, Pa., districts. The latter scale was prescribed for distances of 160 miles and less. As modified by the subsequent general increases, it provides rates of $2.10 per net ton for 50 miles, as compared with $1.58 for that distance under the southern scale; $2.80 for 100 miles, as compared with a southern rate of $2.10; and $3.80 for 160 miles, as compared with a southern rate of $2.63 for that distance. The present southern scale is maintained voluntarily by the railroads in southern territory at a level considerably lower than that of the specific rates prescribed in *International Agricultural Corp.* v. *Louisville & N. R. Co.*, 22 I. C. C. 488, for application on sulphuric acid from Copperhill, Tenn., to numerous southern destinations, as affected by the general rate changes.

Iron ore.—There are no comparisons of record herein between interstate rates on iron ore between points in southern territory and like rates between points in official territory. The record does reveal, however, that rates under an Alabama intrastate scale applicable between certain points in Alabama on iron ore, when for furnace use, are lower than specific rates for like distances on ex-lake iron ore between points in official territory. For example, the ex-lake rate from Cleveland, Ohio, to Pittsburgh, Pa., 131 miles, is $1.21 per long ton while the rate for that distance under the Alabama intrastate scale mentioned

is 90 cents; and the rate from Lorain, Ohio, to Pittsburgh, 157 miles, is $1.21, as compared with the rate of $1.01 for that distance under the Alabama scale.

At the oral argument it was contended that the comparisons of commodity rates just made indicate that the general level of rates on industrial raw materials in the South is low in comparison with that on similar traffic in official territory, and that the disadvantage to the South resulting from higher rates on manufactured articles is thereby offset. However, the record does not reveal the relative average levels of the rates on raw materials generally in the two territories. It will be noted also that a number of the low commodity rates in the South apply on commodities that cannot be classed as industrial raw materials, such as brick, fertilizer, and sand and gravel.

INTERTERRITORIAL CLASS RATES

The interterritorial class rates between the South and official territory represent a blending of the scales of class rates applicable in each territory. The interterritorial class 100 rates are either key rates reflecting the existence of water competition along the Atlantic seaboard, or rates made on the so-called K–2 Q–1 formula. Between points in official territory and points in the States of Kentucky, North Carolina, southern Virginia, and northeastern Tennessee, the class rates reflect the formulæ prescribed in the so-called border States cases, *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.*, *supra*, *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.*, *supra*, and *East Tennessee Border Traffic Assn.* v. *Akron C. & Y. Ry. Co.*, *supra*, previously described. Generally speaking, the blending of the southern and eastern class rate scales results in interterritorial rates lower than those which prevail in the South.

In some instances, however, particularly for the longer distances, the interterritorial rates exceed those in the K–2 scale. This fact was referred to in *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.*, *supra*, where we stated:

> Another ground of criticism stressed by complainants is that in many cases interterritorial rates exceed those in the K–2 scale for the same distances, and complainants declare that this was not contemplated in our findings in the *Southern Class Rate Investigation*, *supra*. Such a result, however, was foreseen and fully discussed in our reports in that case, in which we expressly refused to require that interterritorial rates be subject to the K–2 scale as a maximum.

The following table shows certain inconsistencies in the interterritorial first-class rates between official and southern territories:

	Miles	First-class rate	K-2 scale rate	Relation of first class to K-2 scale
		Cents	*Cents*	*Cents*
Between Pittsburgh, Pa. and—				
Atlanta, Ga.	779	229	219	10 (higher)
Birmingham, Ala.	792	220	222	2 (lower)
Spread	13 (greater)	9 (lower)	3 (higher)	
Between Pittsburgh, Pa. and—				
Spartanburg, S. C.	694	207	206	1 (higher)
Florence, S. C.	693	193	206	13 (lower)
Spread	1 (lower)	14 (lower)	0	
Between Detroit, Mich. and—				
Goldsboro, N. C.	812	186	226	40 (lower)
Macon, Ga.	825	228	226	2 (higher)
Spread	13 (greater)	42 (higher)	0	

From Pittsburgh to Birmingham the distance is 13 miles greater than that to Atlanta, but the rate to Atlanta is 9 cents higher. Measured by the K–2 scale the rate to Atlanta should be 3 cents lower than to Birmingham. Distances from Pittsburgh to Spartanburg and Florence differ by only 1 mile, but the rate to Florence is 14 cents lower than to Spartanburg. From Detroit to Macon the distance is 13 miles greater than that to Goldsboro, but the rate to Macon is 42 cents higher than the rate to Goldsboro.

Interterritorial commodity rates.—During recent years numerous reductions have been made in commodity rates from the South to official territory. A member of the auxiliary committee, central freight association, who testified for respondent rail carriers, named commodity rates on 97 commodities from specific points in southern territory to specific destinations in official territory that were reduced in 1940, 1941, and 1942; and compared these reduced rates with rates on like traffic within official territory. In many instances, the reduced interterritorial rates are lower than rates for the same distances on the basis that prevails generally in official territory. In most such instances, the official territory rates are class rates based on the classification, and in a majority of the others, they are exception rates. In a relatively few cases the higher rates in official territory named are commodity rates. Illustrative of the latter situation are the present rates on bauxite ore, in carloads, from Cunningham, Seney, Shannon, and Six Mile, Ga., to Baltimore, Md., and Philadelphia and Plymouth Meeting, Pa., which range from 15.1 to 16.5 percent of the eastern first-class rates for equal distances, whereas this traffic moves generally in official territory at commodity rates that are 16.8 percent of eastern first-class rates. Also cigarette paper, in less than carloads, in lots of 15,000 pounds, moves from Pisgah Forest, N. C., to New York City at a rate 48.4 percent of the eastern first-class rate for that distance whereas a commodity-rate basis that is 54 percent of the like class rates applies generally in official territory. The rate on shelled

peanuts, in carloads, from Hempstead, N. C., to Pittsburgh is 37.9 percent of the eastern first-class rate for the same distance, while a commodity-rate basis that is 40 percent of first class is maintained generally within official territory. On ferromanganese, in carloads, from 11 points in southern territory to 176 destinations in official territory the rates average 21.5 percent of eastern first-class rates, whereas within official territory the rates on like traffic range from 17.4 to 25.6 percent of first class. Because of motortruck competition, the less-than-carload rates on alum, glass bottles, and jars, metal covers, tops, or caps, and tumeric from points in official territory to Faison, N. C., a point at which pickles are produced in commercial quantities, range from 9.5 to 31.7 percent less than the rates on similar traffic for equal distances within official territory.

A parity is now maintained between the rates from southern territory to official territory and those within official territory on the following articles: Ferroalloys; unfinished aluminum, blanks, stampings, and shapes; asphalt petroleum, coke; leather; pig iron; aluminum pig or ingot; cast-iron pipe; iron or steel plumber's goods; cast-iron hollow ware; hydrants and fire plugs; upholstering fabric and trimming; cotton flannels or napped fabric; and automobile-body parts, wooden, painted. On automobile tires, there are some combination rates from the South to official territory that are lower than the rates on tires for the same distances within official territory.

In some instances, the rates on manufactured products from the South to official territory exceed the rates on like products within official territory to a greater extent than the corresponding interterritorial rates on raw materials, that compose the manufactured products, exceed the rates on like raw materials within official territory, but in other instances the reverse is true. The following examples of the former situation were given by a witness for the Tennessee Valley Authority, the manufactured products being named in parentheses. The percentage figures state the relation of the interterritorial rates on the commodity named to the rates on the same commodity within official territory: Cottonseed 107 percent (oleomargarine 137 percent, cooking or salad oil 137 percent); woodpulp 109 percent (pulpboard 110 percent, paper bags 111 percent, and newsprint paper 159 percent); asphalt petroleum 100 percent (asphalt roofing 110 percent, asphalt paint 153 percent); clay 112 percent (chinaware plumber's goods 139 percent, chinaware pottery 140 percent); and pig iron 100 percent (steel bars and sheets 129 percent, tractors 140 percent, and mechanics' tools 151 percent). A witness for the southern carriers gave the following instances in which the rates from the South to official territory on manufactured products bear lower percentage relations to the rates on like articles within official territory, than do the interterritorial

rates on raw materials with respect to the rates on those materials within official territory: Hides 127 percent (sole leather 100 percent, boots and shoes 90 percent); aluminum pig or ingot 100 percent (aluminum sheet or plate 92 percent); scrap iron 134 percent (cast-iron pipe, iron or steel plumber's goods, cast-iron hollow ware, and hydrants and fire plugs, each 100 percent); and unmanufactured tobacco 106 percent (cigarettes 77 percent and smoking and chewing tobacco 97 percent). It will be noted that the rates from the South to official territory on boots and shoes, aluminum sheet or plate, and cigarettes and smoking and chewing tobacco are lower than the rates for equal distances on like traffic within official territory.

In a number of proceedings we have prescribed or approved substantially the same mile-for-mile levels of rates on particular commodities from points in southern territory to points in official territory as were maintained thereon between points within the latter territory. *Brick and Clay Products in the South*, 88 I. C. C. 543; *American Distilling Co.* v. *Akron, C. & Y. Ry. Co.*, 140 I. C. C. 633; *Krupp Foundry Co. v. Southern Ry. Co.*, 148 I. G. C. 743, 156 I. C. C 415; *Hosiery From Southern Points*, 156 I C. C. 117; *Cullet in Southern Territory*, 169 I. C. C. 153; *Eastern Tanners Glue Co.* v. *Southern Ry. Co.*, 171 I. C. C. 213; *Stone, Marble, and Slate from or to Southern Points*, 183 I. C. C. 611; *Muscle Shoals White Lime Co.* v. *Akron & B. R. Co.*, 205 I. C. C. 273; *Coke from Alabama and Tennessee to Central Territory*, 208 I. C. C. 281, 215 I. C. C. 3[illegible]; *Sugar from Gulf Coast Port Groups to Northern Points*, 234 I. C. C. 247, *State of Alabama* v. *New York Central R. Co.*, 235 I. C. C. 255, 237 I. C. C. 515; and *Alabama By-Products Corp.* v. *Ahnapee & W. Ry. Co.*, 256 I. C. C. 649. In *Coke from Alabama and Tennessee to Central Territory*, *supra*, we prescribed rates on coke from southern producing points to consuming points in central territory on the same level, mile for mile, as we had previously found reasonable for application within central territory; and the judgment of the District Court of the United States for the Northern District of Illinois upholding our order in that proceeding was affirmed by the Supreme Court in *Baltimore & O. R. Co.* v. *United States*, 304 U. S. 58.

In some instances, we have prescribed commodity rates between southern and official territories that exceeded by 10 percent or less the rates found reasonable for application within official territory. For example, in *Paper, Official-Illinois Territories to South*, 234 I. C. C. 81, 238 I. C. C. 104, we prescribed maximum reasonable rates on paperboard, pulpboard, paperboard boxes, pulpboard boxes, and other paper articles, in carloads, from points in official territory to destinations in Southern territory 10 percent higher than the rates in effect for like distances within official territory; and found not unrea-

sonable rates on like traffic between these territories in the reverse direction. The latter rates were already on a basis 10 percent higher than the official territory level.

In *Livestock to and from the South*, 253 I. C. C. 241, we prescribed on edible livestock, in carloads, between points in southern territory and from points in southern territory to destinations in official territory a scale of rates for distances up to 1,600 miles which were 1 or 2 cents per 100 pounds higher than the corresponding rates under the scale, as extended, which we had prescribed in *Eastern Livestock Cases of 1926*, 165 I. C. C. 277, for application within central territory for distances up to 800 miles.

In our report on reargument and reconsideration in *Schoen Bros., Inc.* v. *Erie R. Co.*, 258 I. C. C. 161, we found that just and reasonable rates for the future on green salted hides, in carloads, from certain points in Alabama, Georgia, and Florida to Endicott, N. Y., and from Atlanta, Ga., to Boston, Mass., would be rates from 1 to 3 cents per 100 pounds higher than the rates for like distances within official territory. The prescribed interterritorial rates ranged from approximately 1.5 to 5.6 percent higher than the corresponding official territory rates.

In our report on further hearing in *Cotton, Woolen, and Knitting Factory Products*, 258 I. C. C. 471, we stated that the maximum reasonable any-quantity rates, prescribed in prior reports in that proceeding, on finished cotton piece goods from the South to official territory averaged 9 or 10 percent higher than the rates prescribed for application within official territory; that the rates on those products actually established by the rail carriers from the South to official territory were only about 4 percent higher than the rates prescribed for official territory, but approximately 8 or 9 percent higher than the level the carriers actually established within the North; and that the international rates in effect on dry goods and on grey goods and yarn generally showed a closer relation to the northern level than obtained in the adjustment on finished cotton piece goods.

RELATIVE LEVELS OF REVENUE FROM ALL FREIGHT, SOUTH VERSUS EAST

The actual freight revenue levels per revenue ton-mile in the South in relation to the freight revenue levels per revenue ton-mile in official and western territories, has been a subject of study in this investigation.[54]

For statistical purposes we have assigned the steam railways to territorial groups described as follows:

[54] The distinction between a comparison of rate levels and a comparison of revenue levels is that the former is based on the published rates, whereas the latter is based on the revenue actually received from the traffic which moved.

Eastern district.—That portion of the United States bounded on the west by the northern and western shore of Lake Michigan to Chicago, thence by a line to Peoria, thence to East St. Louis, thence down the Mississippi River to the mouth of the Ohio River, and on the south by the Ohio River from its mouth to Parkersburg, W. Va., thence by a line to the southwestern corner of Maryland, thence by the Potomac River to its mouth. The eastern district is divided into the New England region, comprising the New England States; the Great Lakes Region, comprising the section on the Canadian boundary between New England and the westerly shore of Lake Michigan to Chicago, and north of a line from Chicago via Pittsburgh to New York; and the central eastern region, comprising the section south of the Great Lakes region, east of a line from Chicago through Peoria to St. Louis and the Mississippi River to the mouth of the Ohio River, and north of the Ohio River to Parkersburg and a line thence to the southwestern corner of Maryland and by the Potomac River to its mouth.

Southern district.—That portion of the United States bounded on the north by the eastern district and on the west by the Mississippi River. The southern district is divided into the Pocahontas region comprising the section north of the southern boundary of Virginia, east of Kentucky and the Ohio River north to Parkersburg, W. Va., and south of a line from Parkersburg to the southwestern corner of Maryland and thence by the Potomac River to its mouth; and the southern region, comprising the section east of the Mississippi River and south of the Ohio River to a point near Kenova, W. Va., and a line thence following the eastern boundary of Kentucky and the southern boundary of Virginia to the Atlantic Ocean.

Western district.—That portion of the United States which is west of the eastern and southern districts. It comprises the northwestern region, the section adjoining Canada lying west of the Great Lakes region, north of a line from Chicago to Omaha and thence to Portland and by the Columbia River to the Pacific Ocean; the central-western region, the section south of the northwestern region, west of a line from Chicago to Peoria and thence to St. Louis, and north of a line from St. Louis to Kansas City and thence to El Paso and by the Mexican boundary to the Pacific Ocean; and the southwestern region, the section lying between the Mississippi River south of St. Louis and a line from St. Louis to Kansas City and thence to El Paso and by the Rio Grande to the Gulf of Mexico.

The boundaries between the districts do not correspond exactly to those between the class-rate territories. For example, most of the Pocahontas region is in official territory.

In most of the cost studies the Pocahontas region is separately treated; or statistics for the eastern district are shown both including

and excluding the Pocahontas region. The traffic handled in the Pocahontas region consists of from 85 to 90 percent products of mines, about 84 percent consisting of coal.

Comparisons are made of the freight revenue levels in the eastern district with those in the southern region and in the western district, adjustment being made for differences in the average length of haul, the count of interterritorial traffic and the count of bridge traffic. The comparisons are made by applying the eastern average revenue level per ton-mile by individual commodity classes, as shown by our freight commodity statistics statement No. 40100 for the year 1939, to the traffic handled in the southern region and western district. The constructive gross freight revenues thus computed for the South and West are compared with the actual gross freight revenues for the South and West taken from the freight commodity statistics, statement No. 40100. The results indicate that the actual gross revenues in the South in 1939 exceeded by 5.5 percent the constructive gross revenue based on the application of the eastern level of revenues to the southern traffic. This indicates that the southern level of revenue is about 5.5 percent higher than the eastern level. These gross revenues include divisions of joint rates, both intraterritorial and interterritorial, local rates, import and export rates, switching charges, and various accessorial charges.

When comparison is made between the East, including the Pocahontas region, on the one hand, and the South on the other, the southern level of freight revenue is found to be 3.9 percent above that for the East. The actual gross revenue in the West exceeds by 16.6 percent the constructive gross revenue obtained by applying the eastern revenue level to the western traffic. When comparison is made with the East, including the Pocahontas region, the actual gross revenues exceed the constructive gross revenues by 15.2 percent.

The above comparisons are subject to the criticism that the revenues by commodity classes are gross revenues rather than the net revenues. The gross revenues are before deductions for pick-up and delivery allowances, switching absorptions, et cetera. In some instances they include refrigeration revenues. A comparison between the gross revenues and the net revenues by districts indicates that the overstatement of the net revenues is greater in the southern region than in the eastern district, the Pocahontas region, or the western district. The ratios (percent) of the gross revenues to net revenues by districts and regions are shown below:

Eastern district	104.48
Pocahontas region	101.18
Southern region	105.59
Western district	103.9
United States	104.18

Based on the above it appears that the so-called actual revenues taken from the freight commodity statistics are overstated by a small amount in each territory. Such overstatement is greater by something over 1 percent in the southern region as compared to the East. This would have the effect of narrowing the difference between the southern and eastern revenue levels to somewhere between 3 and 5 percent.

EFFECT OF APPLYING OFFICIAL TERRITORIAL LEVEL OF ALL FREIGHT RATES TO CONSIST OF ALL FREIGHT TRAFFIC IN THE SOUTH

A witness for the southern carriers introduced an exhibit purporting to show the effect of applying the eastern district revenue per ton-mile shown by our freight commodity statistics for the year 1939 by individual commodity classes, numbered 10 to 701, on carload traffic and the revenue per ton-mile on less-than-carload traffic, adjusted for differences in average haul, to the revenue ton-miles of each commodity class and to the revenue ton-miles of less-than-carload traffic carried in the southern region. The commodity classes were also divided according to the type of equipment which would ordinarily be used. The results are shown in the following table with the revenues applying to each class of equipment:

Type of equipment	Southern region revenue	Southern region constructive gross revenue at eastern district rate per ton-mile for southern region haul
Boxcars, carload	$181,559,994	$156,569,555
Boxcars, less than carload	49,420,914	41,254,418
Boxcars, total	230,980,908	197,823,973
Refrigerator cars	47,180,237	33,144,124
Gondolas and hoppers	126,218,104	126,543,713
Stock cars	3,852,326	3,478,254
Tank cars	35,942,950	30,786,754
Flatcars	5,219,308	7,233,449
Grand Total	449,393,933	408,990,268

Net reduction in revenue 8.99 percent = $40,403,665.

The following explanatory statement is quoted from the carriers' exhibit:

(a) The computed revenue ton-miles for the Eastern District were 1,043,100,000 and for the Southern Region, 336,500,000. In order to obtain the true average haul in each district the computed revenue ton-miles were divided by the number of tons originated or terminated, whichever was greater. Thus the Eastern District ton-miles were divided by 4,140,502 tons terminated which produced an over-all average haul in the Eastern District of 252 miles and the Southern Region computed revenue ton-miles were divided by 1,008,522 tons terminated which produced an over-all average haul of 334 miles. It is realized that where the tons terminated are used to compute the over-all average haul, that tons origi-

nated which leave the district and the "overhead" tons are not included and, that where tons originated are used, that tons terminating coming from beyond the district and "overhead" tons are not included. It is not thought, however, that this results in any serious distortion but, in any event, the data necessary to obtain the true count of tons handled in a given district is not available.

Certain methods of computation used in the exhibit just mentioned were criticized by our head cost analyst who made a restatement of this exhibit. The exhibit was corrected to include a count of ton-miles of interterritorial traffic which had been omitted in the carriers' exhibit. The correction for count of interterritorial tons was based upon the 2-day analysis of carload traffic moving on May 27 and September 23, 1942, previously described. Correction for count of tons of bridge traffic was also made based on the 1-day traffic analysis of all carloads moving on May 27, 1942. Average haul was computed for each commodity classification per shipment per territory.

The exhibit was also reworked to provide for adjustments for differences in length of haul based on the eastern class-rate progression in lieu of the southern class-rate progression, inasmuch as the study computes the effect of superimposing the eastern district revenue levels on southern traffic. The following table shows the results of recomputation by our head cost analyst:

Type of equipment	Southern region revenue	Southern region constructive gross revenue at eastern district rate per ton-mile for southern region average haul.
Boxcars, carload	$181,559,994	$163,884,478
Boxcars, less than carload	49,420,914	45,103,874
Boxcars, total	230,980,908	208,988,352
Refrigerator cars	47,180,337	36,419,314
Gondolas and hoppers	126,218,104	136,690,098
Stock cars	3,852,326	3,008,078
Tank cars	35,942,950	32,920,230
Flatcars	5,219,308	6,968,030
Grand total	449,363,933	425,984,102

Net reduction in revenue 5.2 percent = $23,490,831.

If we include the rate per ton-mile for the Pocahontas region with the rate per ton-mile for the eastern district, a similar computation shows a net reduction in revenue in the southern region of $16,987,789, or 3.8 percent of the total gross revenue. Classification exception rates and commodity rates are not directly in issue in this proceeding. The exhibit just mentioned, and the revised exhibit prepared by our head cost analyst were based upon the assumption of imposing the eastern district level of class, exception, and commodity rates, including import and export rates, switching charges, and accessorial charges, upon all southern region traffic. Therefore the results shown do not reflect the

change in revenues that would be effected by applying the eastern class rates in the South. It does not follow that an equalization of class rates would mean an equalization of all rates and charges.

COSTS AND CONSIST OF TRAFFIC

As previously stated, the Edwards cost studies show that there is little significant difference in the cost of furnishing transportation in the South as compared to the East, excluding the Pocahontas region. If the Pocahontas region is included with the East, the costs for the South, based on the year 1939, are between 3 and 6 percent above those for the East.

The southern carriers argue that the showing that the average ton-mile earnings and average unit costs in southern territory are but little greater than, or even less than, those developed for official territory, largely ignores the fact that the volume of traffic in official territory is very much greater than that for the southern carriers; that the average number of tons per car, and the average number of cars per train are very much greater in the North than in the South; that the average hauls are dissimilar, being much longer in the South than in the North; and that the volumes of the several kinds of freight, particularly high-grade well-paying freight, are very different in the North than those in the South. Average hauls were shown in the section of this report entitled "Cost Studies." It is true that the density of traffic, the average number of tons per car, and the average number of cars per train are greater in the North than in the South. On the other hand, some important factors favor the South. The southern region has a lower compensation per employee per annum, i. e., $1,753 versus $1,925; a lower ratio of empty to loaded car-miles, 57.6 versus 60.5; more miles actually run per hour per train and engine employee in freight service, 14.1 versus 11.5; and more transportation service car-miles per employee, 26,459 versus 24,012. Furthermore, the lighter trains and smaller loads of the South are compensated for in greater or less degree by lower costs. While the revenue ton-miles per train-mile of 553 in the South are 62.5 percent of the corresponding figure of 885 for the East, the expense per train-mile in the South $3.69, is 61.6 percent of the corresponding figure of $5.99 for the East. The foregoing figures are based on operations in 1939.

Most of the factors favorable to the carriers in official territory listed by the southern carriers relate to line-haul service rather than to the terminal costs. It is principally the low terminal costs in the South that account for its relatively low total costs.

In our original report in *State of Alabama* v. *New York Central R. Co.*, 235 I. C. C. 255 (decided November 22, 1939); 237 I. C. C. 515, we said at pages 321–326:

When the southern class-rate investigation was instituted the class rates within and from the South did not reflect the general level of rates. The result accomplished in that proceeding, broadly speaking, was to remove inconsistencies and incongruities in the existing class rates, of which there were many, thereby bringing about greater uniformity and harmony in those rates throughout southern territory and between southern and official territories without materially changing their then-existing average levels. * * * The class rates in the North, prescribed in the eastern class-rate investigation, on the other hand, did rather closely reflect the general rate level therein.

It is obvious from a consideration of these matters that the class rates prescribed in the southern class-rate investigation are on somewhat higher levels, compared with those within the North, than could be justified by considerations of transportation conditions. This was generally recognized when those rates were prescribed. And we have stated a number of times that no inference as to the degree of difference, if any, in the general rate levels and in transportation conditions in the two territories could properly be drawn from a comparison of the class-rate levels.

* * * * * * * *

It is a fair conclusion from the record as a whole, and we accordingly find, that the cost of transporting the articles named in the complaint from producing points in the South into the North, compared with that of transporting like articles within the North, does not justify the maintenance thereon of higher levels of rates than are applicable on like articles within the North.

In *North Carolina Corp. Comm.* v. *Akron, C. & Y. Ry. Co.*, *supra*, we said, at pages 285, 286:

If what are termed transportation conditions are understood as including only physical conditions affecting transportation costs, it may be said that neither the eastern class rates nor the southern have been based on transportation conditions except perhaps to a minor extent. In both the eastern and the southern cases the evidence as to these conditions was exceedingly fragmentary and did not purport to show anything resembling complete costs of transporting class-rate traffic. For that reason we stated in our report in *Eastern Class Rate Investigation*, 164 I. C. C. 314, that the differences in level between the rate scale there prescribed and the scales in southern and southwestern territories were not to be regarded as an index of comparative general rate levels or transportation costs as between the various territories. If it be conceded that cost studies reflecting average conditions affecting aggregate traffic in the two territories, differing widely in composition, disclose no difference in cost corresponding to the difference between the class rates, the question still remains whether in the light of transportation conditions alone, the southern rates are too high or the eastern rates too low. In the southern and the eastern cases alike principal emphasis was placed by shippers as well as carriers on the undesirability of departing too far from existing conditions, and little or no attention was paid to harmonizing the two rate structures. In the eastern case in particular most of the more active shippers opposed the injection of that question into the proceeding.

The southern carriers argue that even assuming that the average unit cost per ton-mile is no higher in southern territory than in official, such unit cost could not safely be used in measuring the reasonableness of rates in one section as compared with another for the

reason that the compositions of traffic from which the aggregate revenues are derived are wholly different. Certain commodities must be called upon to assume a greater share of the transportation burden than others. It is also true that carriers must obtain their revenue from the traffic which moves in the territory in which they operate. As previously stated; however, the ratio of interterritorial traffic between the South and other territories to intraterritorial carload traffic in the South is 124.2 percent, and the great majority of the interterritorial traffic to and from the South is to and from official territory. As to interterritorial traffic the consist is common to both territories.

The following table taken from an exhibit submitted by the southern carriers and based on our freight commodity statistics for the year 1939 shows the percentage distribution of total tons carried and the percentage of revenue for each of the major commodity groups in each territory:

Percentage distribution of total tons carried and revenue by commodity groups

CLASS I RAILROAD 1939

	Eastern district		Eastern (including Pocahontas region)		Southern region		Western district	
	Percent of tonnage	Percent of revenue	Percent of tonnage	Percent of revenue	Percent of tonnage	Percent of revenue	Percent of tonnage	Percent of revenue
Group I: Products of agriculture	6.57	8.73	6.07	8.03	10.80	17.73	18.88	23.70
Group II: Animals and products	1.64	4.72	1.47	4.23	1.45	3.51	3.60	6.30
Group III: Products of mines	58.06	34.85	61.53	40.24	46.39	23.65	36.64	13.98
Group IV: Products of forests	2.43	2.74	2.42	2.69	11.40	9.45	10.59	9.31
Group V: Manufactures and miscellaneous	29.57	41.41	26.89	37.75	27.21	34.66	29.38	39.94
Total all carload traffic	98.27	92.45	98.39	92.94	97.25	89.00	98.49	93.22
All less-than-carload traffic	1.73	7.55	1.61	7.06	2.75	11.00	1.51	6.77

It will be observed that, comparing the eastern district with the southern region, group I, products of agriculture, constitutes a greater portion of the tonnage and revenue in the South than in the East; in group II, animals and products, the percentages are similar; in group III, products of mines, the percentages are greater in the eastern district; in group IV, products of forests, the percentages are greater in the South; in group V, manufactures and miscellaneous, the percentages are greater in the East, the difference in tonnage being 2.3 percent and the difference in revenue being 6.8 percent. Less-than-carload traffic constitutes a greater percentage of the tonnage and revenue in

the South than in the East, even though, as we have seen, considerably more traffic moves on class rates in the East than in the South.

The above table is based on tons carried in each territory. Tons carried as reported in our freight commodity statistics, however, contain a great many duplications. A study of the distribution of carload traffic based on revenue ton-miles for the year 1939 shows the following results.

Distribution of carload traffic based on revenue net ton-miles, percent

Item	Eastern district	Pocahontas region	Southern region	Western district	United States
Products of agriculture	10.7	2.7	15.8	26.8	16.4
Animals and products	3.8	.5	2.2	4.5	3.5
Products of mines	49.3	87.4	40.8	20.1	41.5
Products of forests	3.1	1.6	11.6	13.6	7.9
Manufactures and miscellaneous	33.1	7.8	29.6	35.0	30.7
Grand total, carload	100.0	100.0	100.0	100.0	100.0

The above table indicates that products of mines in the eastern district constitute a greater percentage of the total traffic volume than in the southern region, i. e., 49.3 versus 40.8 percent. This is true in lesser degree of the manufactures and miscellaneous group, i. e., 33.1 versus 29.6 percent. As between the eastern district and the western district the percentage of products of agriculture in the western district is much greater and the percentage of products of mines is much smaller. However, the percentage of manufactures and miscellaneous is slightly greater in the western district.

The contribution in excess of out-of-pocket cost made by the major classes of commodities, in carloads, is shown by the Edwards cost studies, taking the total contribution above out-of-pocket cost made by all carload traffic as equal to 100, for the year 1939:

Item	Eastern district	Pocahontas region	Southern region	Western district	United States
Products of agriculture	4.2	3.1	15.8	18.0	10.8
Animals and products	1.5	1.1	3.4	4.3	2.7
Products of mines	38.0	73.4	21.2	13.9	29.7
Products of forests	2.8	2.8	9.4	8.1	5.7
Manufacturers and miscellaneous	53.5	19.6	50.2	55.7	51.1
Grand total, carload	100.0	100.0	100.0	100.0	100.0

It will be observed that the classes of commodities which contribute most in excess of out-of-pocket costs are products of mines and manufactures and miscellaneous, both of which move in the eastern district in somewhat larger proportion to the total traffic than in the southern region. In the western district, products of agriculture appear to make a substantial contribution above out-of-pocket costs, in fact, a greater percentage of contribution than the products of mines group.

There are wide variations in the consist of traffic as between regions in the same district. The extreme difference between the eastern district and the Pocahontas region, and between the southern region and the Pocahontas region leads us to show the costs for each separately and in combination. There are also extreme differences in the consist of traffic as between individual railroads operating in the same district or region.

RATES OF RETURN

The southern carriers argue that if the costs are less in the South than in official territory, or, if the costs are substantially the same in each territory, the southern carriers with their admittedly higher general level of freight rates should have produced a substantially greater rate of return than the eastern district carriers, but that such is not the case. In recent years, however, the return of carriers in the southern region has generally exceeded the return of carriers in the eastern district, based on reported investment.

As previously stated, the general level of freight revenues per revenue ton-mile in the South appears to exceed that of the East by 3 to 5 percent, based on 1939 freight commodity statistics. If we compare the revenue level for all traffic, freight and passenger, these territorial differences are slightly reduced. The passenger revenues per passenger-mile, both including and excluding commutation traffic, are lower in the souther region than in the eastern district.

The Edwards cost studies show freight costs as a whole in the South to be slightly lower than those in the East, excluding the Pocahontas region from the East. They also show that, excluding Kentucky from the South, the costs as a whole in the South, are slightly higher by 1 or 2 percent than in the East.

The rate of return in the southern region generally has been a little higher than for the eastern district during the 6-year period 1936–41, and during the 7-year period 1936–42. The following table shows rates of return based on net railway operating income and reported investment in railway property used in transportation service, plus cash and material and supplies, taken from "Statistics of Railways" 1936–43:

	Southern region.	Eastern district
	Percent	*Percent*
Year 1936	2.52	1.67
Year 1937	2.35	2.22
Year 1938	1.90	1.38
Year 1939	2.80	2.34
Year 1940	2.87	2.66
Year 1941	4.24	3.62
Average of 1936–41	2.69	2.47
Year 1942	6.51	4.90
Average of 1936–42	3.26	2.83
Year 1943	5.73	4.39

The rate of return in the southern region has exceeded that in the eastern district in 4 years out of the 6-year period 1936–41, and in 5 years out of the 7-year period 1936–42. The rate in 1943 was less than in 1942, but the rate of return in the southern region exceeded that in the eastern district. Nonoperating income of the eastern carriers is relatively much greater than that of the southern carriers, and if taken into account would indicate a higher return in the East. However, nonoperating income does not provide a test of relative transportation costs, rates, or of operating efficiency.

The higher level of freight rates in the South is offset to some extent by the lower level of passenger revenues. The revenue per passenger-mile in the South in 1939 was 91 percent of that for the East. Excluding commutation traffic, the Southern revenue per passenger-mile was 79 percent of that for the East. The operating revenues for passenger and allied services in the South in 1939 constituted 70 percent of the passenger operating expenses, rents, and taxes as compared with a figure of 80 percent for the East. This is the reverse of the situation as to freight traffic. The freight revenues in the South in 1939 constituted 140 percent of the total freight operating expenses, rent, and taxes as compared to a figure of 134 percent in the East. Combining the freight and passenger revenues the percentage ratio of the total revenues to the total expenses is 123 in the South as compared to 119 in the East.

CONTENTIONS OF PARTIES

The Southern Governors' Conference and associated interests, including the motor carriers, the Tennessee Valley Authority, and a number of organizations of southern shippers,[85] contend that the class rates within the South and between the South and other territories are unreasonable and unduly prejudicial. They seek the uniform application of class rates and classification ratings throughout the territory east of the Mississippi River with a uniformity of class rates and ratings between all of the latter territory and all other territories. To effect this uniformity they ask that we prescribe immediately the present eastern class-rate scale and the present official classification for application throughout the territory east of the Mississippi River until a uniform classification for general application throughout the United States can be worked out and adopted, and that we remove the Florida arbitraries. In their opinion, the existing class rates

[85] Among the organizations of southern shippers supporting the position taken by the Southern Governors' Conference are the Southern Traffic League, the Atlanta Freight Bureau, the North Carolina Traffic League, the Charlotte Shippers & Manufacturers Association, the Nashville Freight Bureau, the Memphis Freight Bureau, the Jacksonville Traffic Bureau, the Tampa Traffic Association, the Greater-Miami Traffic Association, the Southern Furniture Manufacturers Association, and the Georgia Canning Manufacturers Association.

constitute an important factor in retarding industrial development of the South, the spread between the first-class rates in southern territory and the first-class rates in official territory is not warranted by transportation conditions, and a readjustment of the class rates would not necessitate a change in the commodity rates. They contend that the relief they seek would not cause a transfer of industry from the North to the South, but would permit the South to absorb its proper proportion of increased national development of industry and would benefit not only the South but also the country as a whole.

Several industrial organizations and groups of shippers in the South, such as the Southern States Industrial Council, the Southeastern Shippers' Conference, and the New Orleans Joint Traffic Bureau, opposed pleas for uniformity of class rates on the eastern basis. They expressed the opinion that the present rate structure within the South, and between the South and other territories, has proven generally satisfactory and that the reductions in class rates sought by the Southern Governors' Conference would result in substantial railroad revenue losses, which would require, as an offset, increases in southern commodity rates that would seriously injure southern industry.

The Southern Paper Manufacturers' Conference, which represents about 95 percent of the paper manufacturers in the South, and the Southern Pine Association, which represents manufacturers of approximately 40 percent of the pine lumber produced in the South and the Southwest, are interested principally in the continuance in the South of commodity rates which are not related to class rates. They ask that any findings herein be restricted to the class rates in issue and that we provide specifically in this report that no change in the exception or commodity rates is intended directly or indirectly by the findings made.

EVIDENCE OF SHIPPERS AS TO CLASS RATES

The testimony of shippers called on behalf of the Southern Governors' Conference respecting the payment of class rates may be summarized as follows:

A manufacturer of washboards at Raleigh, N. C., ships washboards in less than carloads on class rates. In September 1941, a representative month, he made 42 less-than-carload shipments to official territory on which he paid total charges of $184.06. Charges on the official territory level would have been $15.14 less. One shipment was made to Dallas, Tex., on which he would have saved 77 cents at the official territory level. Twenty-five shipments were made to points in southern territory. Charges on the official territory level would have been $45.77 less than actually paid. The principal competitors are at

Columbus, Ohio, and Saginaw, Mich., the latter with a branch factory at Memphis, Tenn. If the official territory level had applied not only from Raleigh, but also from Columbus to the South, the charges from Columbus would be reduced by greater amounts than from Raleigh. Application of the official territory level of rates on the September shipments to the North would have reduced his freight charges by 8 percent. Twenty-five percent of the shipments to the North were to Detroit, Mich., a short distance from Saginaw, where one of his chief competitors is located. The business of the manufacturer who gave this testimony however, has increased substantially.

The operator of a tanning plant at Andrews, N. C., testified that he had recently taken over the tannery at that point, which had been out of operation for several years, and in May 1942, began tanning operations. As of the date of the hearing, September 28, 1942, the company was beginning to make out-bound shipments of leather to some of the 20 principal points to which leather moves, most of which are in official territory. While most of the shipments will be in carloads, on which both class and commodity rates apply, some less-than-carload shipments are anticipated, on which the class rates will apply. Between May 22, 1942, and June 18, 1942, he shipped 9 carloads of green salted hides, 6 from New York, N. Y., 2 from Harrison, N. J., and 1 from Detroit, Mich., and 5 carloads of dry hides, 3 from New York, 1 from Brooklyn, N. Y., and 1 from Waverly, N. J., on which class rates applied. The total charges at the applicable class rates were $6,063.45, whereas the total charges at the official territory level would have been $4,504.63. Leather is usually sold f. o. b. tannery or warehouse. This company has experienced difficulty in selling and quoting prices competitive with tanneries able to ship at lower freight rates.

Imported hides now move from the New York area to Andrews. Under present war conditions most steamers discharge at New York, but, in peacetime, cargoes of hides could be discharged at Norfolk or New Orleans, and this company might obtain imported hides through those ports. This company will also use domestic hides which will be obtained principally in Chicago, Ill., Detroit, Mich., and St. Louis, Mo. There are very few hides produced in the South. However, in *Schoen Bros., Inc.*, v. *Erie R. Co.*, 255 I. C. C. 501, 258 I. C. C. 161, we prescribed reasonable rates on green salted hides from certain points in Alabama, Georgia, and Florida, to Endicott, N. Y., and from Atlanta, Ga., to Boston, Mass. The four principal markets for finished leather are New York, St. Louis, Chicago, and Philadelphia.

Quebracho extract, used in tanning, is imported. The differences in freight rates on this commodity are said to be more drastic than on hides and leather, but no exhibit was introduced showing these

rates. Chestnut extract, also used in tanning, is produced in the South and the freight rate is a very small cost factor.

A shipper of wine at Atlanta complained of the rates on wine from that point to official territory. The witness knew little about rates, and an exhibit prepared by his traffic man was erroneous. The applicable rates to most of the points shown on the exhibit are combination rates, one factor of which are exception rates from Atlanta to border points. His principal competition comes from New York City, but he also operates a winery at Brooklyn, N. Y. His product is nationally advertised and he does a nation-wide business. A larger plant has recently been constructed at Atlanta indicating that the business has made substantial progress at that point.

Testimony for a manufacturer of macaroni products at Memphis, Tenn., was offered by the manager of the Memphis Freight Bureau. For example, from Memphis to Evansville, Ind., 301 miles, the rate on macaroni and noodles and spaghetti, in less than carloads, is 68 cents, whereas from Chicago, 284 miles, the rate is 48 cents, a difference in favor of Chicago of 20 cents. If both rates were made 50 percent of the eastern first-class scale they would be 49 cents and 48 cents, respectively, and the rate advantage of 20 cents which Chicago has would be reduced to 1 cent. This shipper has never complained to the railroads about his rates, which are fourth class (50 percent of first class) in official territory and, by exception, class 50 in the South, in less than carloads. In *Macaroni & Noodle Mfrs. of America* v. *Alabama G. S. R. Co.*, 50 I. C. C. 289, the fourth-class rating was found not shown to be unreasonable or unduly prejudicial for all territories. In the South, fourth class is 55 percent of first class. This shipper has competitors at Louisville, Ky., and New Orleans, La., and distributes his products throughout the South and to Kentucky and some Ohio River points.

Five other shippers who testified on behalf of the Southern Governors' Conference do not ship their products on class rates. They testified with respect to furniture from Birmingham, Ala., glass bottles from Chattanooga, Tenn., cucumber pickles from Faison, N. C., peanut products from Columbus, Ga., and grading machinery from Taccoa, Ga., and Vicksburg, Miss.

Present rates on glass bottles from Chattanooga to official territory are on a combination basis, using a commodity rate to Cincinnati, plus exception rates beyond. Approximately 25 percent of the production of the shipper who testified is shipped to the North, although he has only a "limited amount of tonnage" to offer in that territory. His sales have also been extended to the West.

The pickle manufacturer ships 25 percent of his output of salt stock and brine pickles to the North, and the finished product to the North

and South. The applicable rates are truck-competitive rates and are lower than the normal official territory level of rates. The witness's chief concern is that his present rates might be increased.

The shipper of peanut products ships them to all parts of the country, except New England, on rates lower than class rates. The company purchases a million dollars worth of peanuts annually and has annual sales of 5 million dollars.

The manufacturer of grading machinery ships his products all over the world. His first plant in the East was at Peoria, Ill. Later he established plants at Taccoa and Vicksburg. He made no complaint about his rates and testified that the plants were established in the South because of the many advantages in that territory.

Testimony with respect to shipper dissatisfaction with southern class rates was given by the secretary and manager of the Atlanta Freight Bureau, appearing for the southern governors, and by the commissioner of the Nashville Freight Bureau. The former introduced in evidence an exhibit listing 14 groups of commodities, the rates on which were claimed to have been detrimental to southern shippers. Only 6 of the 14 move on class rates. These are calendars, electric appliances, lead products, iron or steel tanks, cloths, and rags. The evidence shows that although the calendar manufacturer lost a contract to supply calendars to an oil refinery in 1943 he obtained a 1944 contract from the same company. In *State of Alabama* v. *New York Central R. Co.*, *supra*, we declined to disturb the existing basis of rates on certain electrical appliances, i. e., conduit outlet boxes, junction boxes, switch boxes, and outlet plates, and stated that the purchaser's familiarity with the manufacturer and with its products is generally controlling. It appears that the rates on cloth and rags about which complaint was made were not class rates. The shipper of lead at Atlanta ships his entire output to the South and has never asked the southern railroads for competitive rates to the North. The same is true with respect to the shipper of iron and steel tanks. To the Ohio River crossings, the Virginia cities, Chicago and Peoria, Ill., commodity rates on iron and steel tanks substantially lower than the class rates apply.

The witness for the Nashville Freight Bureau criticized respondents' failure to reduce rates on steel automobile truck bodies from Nashville to Metuchen, N. J., but admitted that the Nashville shipper obtained a contract for such truck bodies which provided for their purchase f. o. b. Nashville. His other criticism on behalf of a particular shipper was of the failure of the railroads to reduce the rates on shell boxes from Nashville to all points in official territory. He stated that rates on the basis sought had been established to 13 destinations. This shipper had not obtained a contract for the boxes and

does not produce them. There is one actual manufacturer of shell boxes at Nashville who is engaged in shipping the boxes.

EFFECT OF CLASS RATES ON ECONOMIC DEVELOPMENT

The southern proponents of class-rate uniformity argue that the southern class-rate structure has retarded and is retarding industrial development in the South; that whatever development has occurred has been largely in primary industries, and that uniformity of class rates in the South with those in the East is necessary to make possible and to stimulate greater industrial development in the South. The general revisions which we have made in the southern class rates and in the eastern class rates were based largely upon the preexisting levels of class rates. Our general revisions served to harmonize the class rates within those two territories, and to place them upon a basis reasonably related to distance, but, as previously stated, in neither of these revisions was primary attention given to harmonizing the two rate structures. At the time of the southern revision, motor carriers were not substantial competitors of the railroads, and at the time of the eastern revision, interstate motor carriers were not subject to regulation. In this connection it may be noted that the motor-carrier interveners are here advocating uniform class rates east of the Mississippi River, but on a basis much higher than in effect either in the South or East.

It is, of course, true that the South does not have as many industries as the East, and that a comparison of other data relating to manufacturing shows that manufacturing is vastly greater in extent in the East than in the South. The industrial development of the East is due to many factors other than transportation services and costs, such as climate, soil, natural resources, available water power, supplies of natural gas and coal, and early settlements of population which antedated the building of railroads.

The principal factors which control the location of industries are: Availability of and cost of obtaining and assembling raw materials, availability of markets, including cost of reaching such markets, adequacy and cost of fuel and power, climate, labor, capital, and, sometimes, momentum of an early start, and the personality of the individual founding the industry. In 1939, freight revenue on commodities in the manufactures and miscellaneous group was but 5.3 percent of the destination value of manufactured goods. From this it would seem that any differences in freight charges resulting from differences in class rate levels is only a small fraction of that figure. Many commodities have a nation-wide market, regardless of the location of the plants in which they are manufactured. Nearness to markets and ability to ship to markets, on a basis fairly and reasonably related to the rates of competitors, are nevertheless potent factors in the location

of a manufacturing plant. In fact, rate relations are more important to the manufacturer and shipper than the levels of the rates.

Statistics and testimony by southern witnesses relied upon to show retarded growth of the South industrially are mostly for the year 1939 and include the following:

Official territory has 16 percent of the land area and 53 percent of the population of the country.

Southern territory has 13 percent of the land area and 16 percent of the population.

Official territory has 55 percent of all persons gainfully employed and 69 percent of the persons employed in manufacturing industries.

Official territory has but 29 percent of the persons engaged in the extractive occupations in agriculture, forestry, mining, and fishing.

In 1939, added values for manufacturing accounted for 42 percent of the total income in official territory compared with 24 percent in the South, Southwest, and western trunk-line territory combined.

In 1940, the average per capita income for the 8 southern States ranged from $268 in Alabama to $481 in Florida, and the average dollar incomes per person employed from $649 to $1,335. In the same year corresponding data for 17 States in official territory were, per capita incomes from $417 in West Virginia to $1,063 in the District of Columbia, and average dollar incomes per person employed from $1,439 in Vermont to $2,446 in Delaware.

The average value of manufactured goods sold by official territory shippers in other parts of the country was $125.77 per ton in 1939. For the South, Southwest, and western trunk-line territories combined, the average value per outbound ton was $24.32.

The average ton shipped from official territory includes added values for manufacturing of $54.69; for the South, Southwest and western trunk-line territory combined, it was $4.18.

The South and West are much more dependent upon agricultural commodities and other raw and similar materials than official territory, and there is a downward slope of income as dependence of raw materials increases.

The South has a surplus of labor that agriculture cannot comfortably employ.

Southern labor is easily adapted to manufacturing pursuits.

Official territory does not have a monopoly of material and energy resources.

There is an abnormal concentration of national markets in official territory. It has 53 percent of the total market for necessaries; it absorbs 62 percent of consumer luxuries because of higher individual income; it has a concentrated market for raw materials and industrial machinery and equipment.

Other evidence offered to support the South's position included per capita income in the States comprising southern and official territories, ratios of the South to the United States with respect to wages, retail and wholesale trade, and availability of labor suitable for employment in industries requiring skill.

It is not contended that freight rates are the sole cause for the South's failure to enjoy a greater share of industry and the national income, but, as stated in the brief filed on behalf of the Southern Governors' Conference, "we do contend that the discriminatory freight rate adjustment has not only contributed to the failure of the South to develop in the past, but that unless it is removed the future industrial development of the South will continue to be retarded."

In order to determine if the South is or is not growing industrially, statistics over a period of years must be examined. Unless otherwise stated, the years used are 1929 and 1939. The following facts are derived from the statistics examined:

For the 10-year period, 1929 to 1939, the number of wage earners in manufacturing industries in the country as a whole decreased 11 percent; in official territory, 12 percent; and in New York State, 13 percent. There was an increase of 5 percent in the South.

There was a 22-percent decrease in manufacturing wages for the entire country, 23-percent decrease in official territory, and 3-percent decrease in the South. Some southern States had an increase.

The values of manufactured products for the entire country decreased 21 percent; in official territory, 25 percent; in New York State, 29 percent; and there was a 1-percent increase in the South. North Carolina had an increase of 8 percent.

Value added by manufacture, for the United States as a whole, decreased 23 percent, 24 percent in official territory, 12 percent in the South, and in New York State, 33 percent. North Carolina had an increase of 7 percent.

From 1930 to 1940, there was a greater decrease in agricultural employment in southern than in official territory; but manufacturing employment increased in the South and decreased in the North.

In 1941, income payments for the United States were 111 percent of those in 1929, for official territory 100 percent, and for the South 128 percent.

From 1930 to 1940, the number of gainfully occupied workers in manufacturing in official territory decreased from 70.5 percent to 69.4 percent of the country's total, but in the South, increased from 10 percent to 11.9 percent.

During the period from 1929 to 1939, the number of wage earners in the canned fruit and vegetable industry in the South increased 68 percent, as compared with an increase of 28 percent in official territory.

The number of wage earners in the cotton industry in 10 northern States decreased 45 percent, as compared with an increase of 12 percent in 6 southern States.

Value of cotton products decreased 55 percent in the northern States and 12 percent in the southern States, and the value added by manufacture decreased 48 percent in the North and increased 8 percent in the South.

Manufacture of heating and cooking apparatus, except electric, during the 10-year period, increased in the South and increased in the North. There was an increase of 39 percent in the number of wage earners in the South, and a decrease of 21 percent in the North: Value added by manufacture increased 8 percent in the South and decreased 32 percent in the North.

The number of wage earners in the furniture industry increased 18 percent in 6 southern States and decreased 33 percent in 12 northern States. Value added by manufacture decreased 43 percent in the northern States and less than 0.5 of one percent in the southern States.

There are other branches of manufacturing that have progressed more rapidly in the South than in the North, but there are some in which, during the 10-year period, the industrial trend was not as favorable in the South as in the North. These include the manufacture of morticians' goods, certain flavoring extracts and sirups, and flour and grain-mill products.

No specific instance was proved where an industry was not established in the South because of the class-rate level. However, in the nature of things this fact would be difficult to prove because of the many factors entering into the location of an industry.

A witness for the southern interests was the editor of an industrial publication devoted to the cause of industrial development of the South and Southwest. Excerpts from copies of this publication in 1940, contain a statement by the southern governors that, "In two years the volume of the South's manufactured products has increased approximately 35 percent and is now 2½ times the value of its agriculture output; during the same period the number of manufacturing plants in the South increased by 803 as contrasted to a decline in the rest of the United States of 3120." The publication contains many pages listing new industries that have located in the South, some of which are the largest in the country. They include plants manufacturing cigarettes, textiles, footwear, household furniture, paints, stoves, ranges, water heaters, tin cans, clothing, vegetables, drugs and medicines, flour, optical goods, and fluorescent lamps.

The southern governors called attention to the fact that since the start of the war, many plants manufacturing war materials have been established in the South, and that, when peace comes, these plants will

have to have rates on which they can begin immediately to do business. This is a national problem, as well as a territorial problem.

Another contention made by the Southern Governors' Conference is that raw materials and semimanufactured goods produced in the South which are relatively low priced, are shipped to the North for final manufacture with subsequent reshipment of higher-priced manufactured goods back to the South, thus draining the South of its raw materials and semimanufactured products, and depriving it of the benefits flowing from the manufacture of high-priced goods. Raw materials, however, usually move on commodity rates.

The 2-day traffic analysis of all carload shipments moving on May 27 and September 23, 1942, shows the following distribution of traffic:

On the test days 3,507 carloads of products of agriculture originated in the South, of which 1,942 carloads, or 55.3 percent remained there, and 1,356 carloads, or 38.7 percent, were shipped to the East; 84.7 percent of the total carload movement of cotton, one of the South's most important agriculture products, moved between points in the South, some of which moved to the ports for export, and 13 percent was shipped to official territory. The most important movement of agriculture products from the South to official territory comprises fruits and vegetables.

In the animals and products group, 283 carloads, or 56.9 percent of the carloads originating in the South, moved to official territory, and 192 carloads, or 38.6 percent, moved to points in the South. Considerably more than half of the total movement of animals and products consisted of livestock and live poultry, practically all of which moves on commodity rates. The livestock rates both within the South and from the South to official territory were recently prescribed by us in *Alabama Public Service Comm.* v. *Aberdeen, & R. R. Co.*, 253 I. C. C. 241.

Of the total movement of products of mines originating in the South, 53.4 percent moved to the South and 43.9 percent to official territory; 78 percent of the latter movement was coal and coke. Coal from the South to official territory moves on commodity rates which are differentially related to rates from mines in official territory, and the rates on coke have been fixed by us on the same basis as the rates on coke in central territory.

In the products of forest group, 64 percent of the carloads originating in the South moved to points in the South, and 30.1 percent to official territory. The movement of the raw materials in this group, namely, logs, poles, fuel, and pulpwood was 90 percent to the South and 5.9 percent to the North, the movement of lumber, cooperage and plywood, manufactured products, was 2,031 carloads to the South and

2,064 carloads to official territory. These products moved on commodity rates.

In the manufactures and miscellaneous group, 10,301 carloads originated in the South, of which 3,193 or 31 percent were shipped to the official territory, and 5,666 or 55 percent to the South. On the same days, 55,789 carloads originated in official territory, of which 8 percent or 4,463 were shipped to the South and 77 percent or 42,958, to official territory.

FLORIDA PENINSULA [36]

In the southern revision, we prescribed class rates from and to the Florida peninsula on a higher level than for the remainder of southern territory. This higher basis was in the form of a distance scale of arbitraries,[37] referred to herein as the L–2 scale or arbitraries, for the haul within the peninsula to be added to the standard or basic rate from origin to destination. They accrue solely to the peninsula lines, and apply uniformly on all interstate class-rate traffic, intraterritorial and interterritorial, on which the rates were prescribed on a distance basis. On the average, they are about 15 percent of the prescribed basic southern K–2 scale for the same distance. The addition of these arbitraries to the basic rates was authorized because of the unfavorable conditions confronting the carriers operating in the peninsula, such as light density of traffic, high ratio of empty to loaded car mileage, and the inability of those carriers to earn a reasonable return on investment. For the same reasons, similar arbitraries were included in the class rates prescribed in the western-southern revision between the peninsula and western trunk-line territory, all of which were key rates. No arbitraries were included in, nor do the L–2 arbitraries apply in connection with, the key or group rates prescribed in the southern revision between the peninsula and the north Atlantic ports and points in the eastern portion of official territory. For example, the first-class rate between New York, N. Y., and Miami, Fla., is $2.89, which is lower than the K–2 scale rate of $2.95, exclusive of any Florida arbitrary. In constructing these group rates we gave consideration to both the rail and the water routes, and the rates were made somewhat lower over the former and somewhat higher over the latter than if such routes had been dealt with separately.

In the instant proceeding, the Governor and the Railroad Commission of Florida and certain associations and shippers, hereinafter collectively referred to as the State, join in the plea of the other southern States for the establishment of uniform classification ratings and rates, and specifically request that the Florida peninsula be placed on

[36] This subdivision of southern territory embraces all points in Florida south of the line of the Seaboard Air Line Railway Company from Jacksonville to River Junction, Fla.

[37] Known as the appendix L–2 scale in our third supplemental report (128 I. C. C. 567) in the southern revision.

an equality with and accorded the same level of class rates, mile for mile, as the remainder of southern territory.[88] It is the State's position that the addition of arbitraries to the basic rates to and from the peninsula results in unreasonable rates and discrimination against the peninsula, and favors the other southern States; that there has been an enormous increase in the number of tons of freight originated and terminated in Florida since the southern revision; and that the peninsula can no longer be considered an area of light-traffic density. Respondents' position is that there have been no such changes in conditions, either as to traffic density, operating costs, or otherwise in the peninsula since the southern revision as would warrant the elimination of the present arbitratries; and that the rail rates at present in effect are reasonably adapted to meet all requirements of Florida industries and shippers, such rates in numerous instances being below the prescribed maximum reasonable level as the result of the railroads' effort to meet the competition of other transportation agencies.

The present rates for the 12 numbered classes between 9 representative points in the peninsula[89] and 19 representative points in southern territory, or border points,[90] for an average distance of 665 miles average $1.0244, as compared with an average of 94.35 cents under the basic K–2 scale. The excess of the present rates over the K–2 rates between these points averages 8.56 percent. Differences resulting from the addition of the arbitraries also occur in the rates between the points in the peninsula and points in other territories. In all instances, however, the excess of the peninsula rates over the basic southern scale decreases as the distances and basic rates increase.

Between the 9 points in the peninsula and the 19 points in southern territory referred to above, the first-class rates average $2.185 and produce an average earning of 65.7 mills per ton-mile. Under the K–2 scale for the same average distance of 665 miles, the first-class rate is $2.02 and it produces 60.07 mills per ton-mile. The excess over the K–2 first-class rates resulting from the arbitraries averages about 16.5 cents per 100 pounds and 5.15 mills per ton-mile.

The three principal railroads operating in the peninsula are the Atlantic Coast Line, the Seaboard Air Line, and the Florida East

[88] A substantial portion of the State's evidence is directed to the higher level of rates in southern territory than in official territory, and to the differences in classification ratings in the respective territories. Those matters are dealt with elsewhere in this report. We will here consider only the evidence relating to the propriety of the additions of arbitraries to the basic rates for the haul in the Florida peninsula, as was done in the southern revision.

[89] Fort Myers, Gainesville, Lake Wales, Miami, Melbourne, Ocala, Orlando, Tampa, and West Palm Beach, Fla.

[90] Birmingham, Montgomery, and Mobile, Ala., Atlanta and Macon, Ga., Cairo, Ill., Evansville, Ind., Louisville, Ky., New Orleans, La., Jackson, Miss., Charlotte and Raleigh, N. C., Cincinnati, Ohio, Columbia, S. C., Memphis, Chattanooga, and Nashville, Tenn., and Lynchburg and Richmond, Va.

Coast.[91] They operate approximately 2,027, 1,687, and 685 miles of road, respectively, in Florida, and reach practically all parts of the peninsula and to a large extent serve the same areas. The Atlantic Coast Line and the Seaboard Air Line also operate in Alabama, Georgia, North Carolina, South Carolina, and Virginia, but the Florida East Coast operates in the peninsula only. These three railroads transported a total of 18,298,630 tons of freight in the State in 1940.

In support of its contention that the traffic density of the Florida railroads has materially increased since the southern revision, the State points out that, based on the reports of carriers to the Railroad Commission of Florida, the total tons of revenue freight carried by the railroads in Florida were 10,667,895 tons in 1921 and 22,701,663 tons in 1940, an increase of 112 percent. As to the traffic density of Florida compared with that of other States, the State submitted in evidence an exhibit, compiled from statements issued by our Bureau of Transport Economics and Statistics showing that the tonnage originated and terminated on class I railroads in Florida in 1940 exceeded the corresponding tonnages handled by class I carriers in 25 and 22 States, respectively, in the same year.[92] The composition of Florida's originated and terminated traffic for that year, segregated as to the five groups of commodities used in our statistical compilations, is as follows:

Group	Products of—	Originated			Terminated		
		Number of commodities	Number of tons (of 2,000 pounds)	Percent of total	Number of commodities	Number of tons (of 2,000 pounds)	Percent of total
I	Agriculture	42	1,156,458	8.15	42	418,769	2.96
II	Animals	22	21,612	.15	22	157,298	1.11
III	Mines	18	8,144,874	57.39	18	8,071,085	57.15
IV	Forest	12	2,380,610	16.77	12	2,084,362	14.76
V	Manufacture and miscellaneous	62	2,488,981	17.54	62	3,392,762	24.02
	Total	156	14,192,235	100.00	156	14,124,276	100.00

In the comparisons made of the tonnage in this table with that of other States for the same year, it is shown that Florida's originated tonnage exceeded that of New Jersey by more than 1,857,000 tons; that of Maryland by more than 5 million tons; that of Georgia and South Carolina combined; that of North Carolina and Mississippi combined; and that it not only exceeded each of the New England

[91] The Louisville & Nashville Railroad, Georgia & Florida Railroad (Southern Railway System), and St. Louis-San Francisco Railway each have a relatively small mileage in northern Florida. In addition, a number of class II railroads operate in the State, including the Atlanta & Saint Andrews Bay Railway, Apalachicola Northern Railroad, Live Oak, Perry & Gulf Railroad, and South Georgia Railway.

[92] The States and the number of tons originated and terminated are listed in statements Q-550 and series 1940, No. 12, compiled by our Bureau of Railway Economics and Statistics from carrier reports.

States of Maine, Massachusetts, Vermont, New Hampshire, Connecticut, and Rhode Island, but was within about 200,000 tons of the total combined tonnage of those States. With respect to the terminated tonnage, it is shown that Florida exceeded that of Georgia by more than 2 million tons; that of Kentucky by more than 2.5 million; that of North Carolina by more than 2.75 million; that of South Carolina by more than 7 million; and that of Mississippi by more than 7.75 million. A somewhat similar comparison was made by respondents in connection with the tons of revenue freight handled by the Atlantic Coast Line and the Seaboard Air Line systems in 1940, and, on brief, the State points to this data as supporting the foregoing comparisons. As to the Atlantic Coast Line, the tons of revenue freight carried by it were, in million tons, 7.1 in Florida, 4.1 in Virginia, 5.2 in North Carolina, 5.5 in South Carolina, 5.2 in Georgia, and 2.3 in Alabama; and the figures shown for the Seaboard Air Line are 7.8 in Florida, 6.1 in North Carolina, 4.5 in South Carolina, 5.9 in Georgia, 2.1 in Alabama, and 4.5 in Virginia.

The following table, compiled from an exhibit of respondents, shows the trend in the traffic density over a period of years in connection with the revenue freight tonnage and ton-mile revenue freight per mile of road of the Atlantic Coast Line in Florida and other southern States traversed by that railroad:

Atlantic Coast Line Railroad

Period	Florida		Alabama		Georgia		North Carolina		South Carolina		Virginia	
	A [1]	B [2]	A [1]	B [2]	A [1]	B [2]	A [1]	B [2]	A [1]	B [2]	A [1]	B [2]
Year 1925	12.20	0.74	2.05	0.90	7.95	1.21	7.91	0.86	6.20	0.88	5.51	1.08
Year 1926	15.11	0.88	2.07	0.94	8.75	1.36	7.85	0.82	6.02	0.85	5.31	1.06
Year 1927	10.98	0.57	1.77	0.74	6.40	0.88	7.42	0.75	6.04	0.83	5.15	1.08
Year 1928	8.62	0.44	1.73	0.69	5.41	0.70	7.29	0.71	5.80	0.79	4.80	1.74
Year 1929	8.54	0.40	1.40	0.58	5.56	0.75	6.81	0.71	5.54	0.80	4.80	1.83
Year 1930	7.66	0.36	1.17	0.49	5.03	0.66	5.78	0.61	4.92	0.68	4.02	1.54
Year 1931	6.21	0.30	0.90	0.39	4.30	0.57	4.90	0.53	4.59	0.62	3.49	1.35
Year 1932	4.52	0.22	0.56	0.25	2.95	0.39	3.22	0.35	2.66	0.39	2.43	0.94
Year 1933	4.84	0.23	0.52	0.23	3.02	0.40	3.58	0.38	2.83	0.41	2.61	1.00
Year 1934	5.58	0.25	0.65	0.29	3.25	0.43	3.76	0.39	2.84	0.40	2.65	0.97
Year 1935	5.70	0.22	0.67	0.29	3.31	0.43	3.93	0.41	3.01	0.43	2.76	1.03
Year 1936	6.50	0.27	1.13	0.42	4.27	0.55	4.50	0.48	3.62	0.52	3.23	1.20
Year 1937	6.88	0.30	1.29	0.50	5.07	0.66	5.45	0.57	4.52	0.64	3.73	1.42
Year 1938	6.03	0.27	1.14	0.45	4.42	0.57	4.76	0.51	3.85	0.54	3.31	1.28
Year 1939	7.16	0.31	1.29	0.50	5.23	0.65	5.20	0.56	4.50	0.63	3.76	1.44
Year 1940	8.74	0.37	1.54	0.64	6.25	0.79	5.73	0.64	5.55	0.75	4.15	1.60

[1] Millions of tons (of 2,000 pounds) of revenue freight.
[2] Average ton-mile revenue freight per mile of road, expressed in millions.

It will be observed from this table that the figures shown in column A bear out the State's contention with respect to Florida's revenue freight tonnage as compared with that in the other States shown. Respondents, however, stress the comparisons made in column B, which shows that the average ton-mile revenue freight per mile of road in Florida is lower than that in the other States named. In

this respect, they call attention to the comparison made for the year 1939, which indicates that the traffic density in Florida, as expressed in ton-miles of revenue freight per mile of road, was barely more than half of that in Alabama; less than half of that in Georgia or South Carolina; only slightly more than half of that in North Carolina; and far below that in Virginia. They also call attention to the comparison made for the 5-year period from 1935 to 1939, as contrasted with the years 1925 and 1926, when the southern revision was before us. At no time during the latest 5-year period of what may be termed normal operations was the relation of Florida's traffic density, as indicated in column B of the table, to that of the other States as favorable, relatively, as it was in 1925 and 1926 when the volume of traffic in Florida was to a considerable extent affected by the Florida real estate "boom" of those years, which were therefore abnormal.

Respondents criticize the "tonnage originated" and "tonnage terminated" comparisons made by the State, on the ground that they failed to take into account the overhead, or transstate, traffic, or either the composition of the tonnage or the extent to which the same traffic may both originate and terminate in the same State. They call attention to the fact that the total of all tonnage originated by class I railroads in Florida in 1940, 14,192,235 tons, was almost identical with the total tonnage terminated. In view of that fact, it is their position that the traffic which originates in Florida contributes very little to the tonnage of other States because by far the greater portion of the traffic which originates in Florida also terminates in that State. In this connection, respondents submitted in evidence an exhibit showing that for the year 1940 the rail tonnage originating and terminating in Florida on 10 commodities,[93] generally of low grade and heavy loading, contributed 11,363,671 tons, or approximately 80 percent, of the originated and 10,598,529 tons, or about 75 percent, of the terminated traffic. Phosphate rock and crushed stone constituted more than 51 percent of the entire tonnage originated and 46 percent of all tonnage terminated. More than 95 percent of the stone handled originated and terminated within the State. Large quantities of the prosphate rock moved a weighted average distance of 32 miles from inland points[94] to Tampa for export. The greater portion of the lumber originated and terminated in the State. Most of the petroleum products were received by water and were either used at the ports or were distributed to inland points within Florida; and most of the fertilizers used in the State were also produced there.

[93] Sand and gravel; stone, broken, crushed or ground; phosphate rock; logs, pulpwood; lumber; shingles and lath; box, crate and cooperage material; refined petroleum oils; fuel, road and residual oils; and fertilizers.

[94] Agricola, Brewster, Coronet, Mulbery, Nichols, Phomisco, Pierce, and Ridgewood, Fla.

The State contends that the Florida arbitraries have been an important factor in the rapid development of Florida's water, water-rail, and rail-water traffic and motortruck traffic, and that the high level of class rates to and from the peninsula have diverted an enormous quantity of traffic to those agencies which the railroads would have handled if the arbitraries had been eliminated. However, the arbitraries have in many instances been eliminated to meet such competition.

Normally, there is intense competition between the rail carriers and the water and motor carriers for Florida's traffic, and this competition is reflected in the traffic densities and freight revenues of the peninsula railroads. Florida's 1,315 miles of ocean coast line exceed that of any continental State in the Union. It has 18 deep-water ports and 28 navigable waterways. Prior to the present war, common and contract carriers operated on the inland waterways and regular service was afforded from the ports by ocean-going vessels in coastwise, intercoastal, and foreign trade. The population of the cities and towns in Florida in 1940 was 1,137,996. There are 61 cities or towns located directly on the waterways, and their population was 77 percent of the urban population in 1940. The average distance from 67 other towns, not on the waterways, to the nearest port or waterway is 39 miles, or, stated differently, 79 percent of the urban population is within 10 miles of waterways, 17 percent within 50 miles, and the remaining 4 percent within 100 miles.

Statistics in the form of exhibits taken from the United States Army Engineers' publications show that in 1939, 16,066,747 tons of traffic moved by water within, to, and from Florida, divided as follows: Foreign commerce, 2,621,948 tons; coastwise traffic, 7,384,049 tons; domestic traffic other than local, 5,232,247 tons; and local traffic, 828,503 tons. An average of 10,369,478 tons of foreign, domestic, and internal water-borne traffic has moved to and from Florida through 12 of its principal ports [93] in the 7 years through 1940, and each year except 1940 shows an increase over the preceding year. In respect of the water-borne foreign commerce in the States bordering on the oceans, the Gulf, and other waterways, Florida ranked ninth in volume of traffic in 1939 and was exceeded only by New York, California, Texas, Ohio, Louisiana, Maryland, Pennsylvania, and Massachusetts. The water-borne traffic handled in 1939 was distributed through the 12 principal ports named; and at least half of the foreign commerce and coastwise tonnage transported between Florida ports and the Atlantic, Gulf, and Pacific coasts moved through Tampa and Jacksonville.

[93] Fernandina, Fort Pierce, Jacksonville, Key West, Panama City, Pensacola, Port Everglades, Port St. Joe, Miami, Port of Palm Beach, South Boca Grande, and Tampa, Fla.

With respect to motortruck competition, the record shows that 101,483 truck and trailer licenses were issued by the State of Florida in 1940, 97.4 percent of which was for privately owned or operated trucks and trailers and the remainder for "for hire" trucks. The privately owned and operated trucks provide the principal highway competition. Hucksters purchase fruits and vegetables in Florida and haul them to practically every State east of the Rocky Mountains. Between October 1941 and May 1942, observers stationed at the State line by the Florida Department of Agriculture reported truck movements of freight equivalent to 31,981 carloads. Nonregulated truckers haul return loads for very little more than the out-of-pocket cost of gasoline and oil. From December 1940 to April 1941 the truck movement of onions from central territory to Florida was equivalent to 88 carloads.

Respondents testified that they have been at all times alert to establish reduced rates by rail, either voluntarily or upon request of shippers, to meet water and motortruck competition. The peninsula arbitraries on intrastate traffic moving at column 100 to column 35 rates, inclusive, were voluntarily removed by them to meet competition of the motortrucks, which had eliminated the arbitraries from their rates. Aside from citrus fruits and vegetables, it is said that the principal products which are shipped in any important volume from Florida to northern and eastern markets are phosphate rock, lumber, naval stores, raw sugar manufactured at a plant in south Florida, and canned fruits and vegetables, principally canned citrus fruits and juices.

Rates on fruits and vegetables made percentages of first class were prescribed by us in *Florida Railroad Commrs.* v. *Aberdeen & R. R. Co.*, 144 I. C. C. 603, 177 I. C. C. 735; and in *Southeastern Vegetable Case*, 200 I. C. C. 273; but because of motortruck competition the railroads reduced the prescribed rates about 15 percent. The present rates are, however, still on a column basis and therefore include the Florida arbitraries. Application of the eastern class-rate basis to this traffic as requested by the State would, respondents say, cut joint revenues of the railroads $400,000 in one season. There is no proof of this assertion. Application of the eastern class-rate scale from points in Florida to points in central territory would in some instances make lower class rates than the present column rates, but there is no showing of the amount of revenue that would be involved.

In *Citrus Fruit from Florida to North Atlantic Ports*, 211 I. C. C. 535, 218 I. C. C. 637, 226 I. C. C. 315, 237 I. C. C. 245, the rail carriers were authorized to establish and maintain on citrus fruits, in carloads, from producing points in Florida to the north Atlantic ports, rates on the basis of the truck rates to the Florida ports and the water rates beyond, without observing the long-and-short-haul provision of section

4 of the act. The rates authorized were established by the railroads and they contain no Florida arbitraries.

In *Commodity Rates to South Atlantic Ports*, 186 I. C. C. 675, 197 I. C. C. 3[illegible], 214 I. C. C. 7, 222 I. C. C. 427, division 2 authorized carriers to establish and maintain over their all-rail routes from points in central and Buffalo-Pittsburgh territories, and portions of western trunk-line territory, to certain south Atlantic and Florida ports, on carload traffic for which they compete with rail-and-water routes from and to the same points through north Atlantic ports, commodity rates made 110 percent of the rates over the latter routes, without observing the long-and-short-haul provision of section 4. The rates authorized were established by the railroads on a rather long list of commodities, and these rates do not contain any Florida arbitraries.

Among the principal commodities which move from or to Florida on rates which include no arbitraries are the following: Lumber, which comprised 11.5 percent of the rail tonnage exported from Florida in 1939; forest products, which in 1940 constituted 16.77 percent of the tonnage originated, and 14.75 percent of the tonnage terminated, in that State; phosphate rock, which in 1940 represented 35.29 percent of the tonnage originated, and 30.56 percent of the tonnage terminated; fuel oil, which in that year comprised 2.77 percent of the tonnage originated, and 2.56 percent of the tonnage terminated; fertilizer and fertilizer materials, which in 1939 constituted 33.2 percent of the total import traffic to Florida and in 1940 comprised 3.3 percent of the tonnage originated, and 2.85 percent of the tonnage terminated; gypsum rock, which in 1939 represented 12.29 percent of the total import traffic to Florida; sugar, which in 1939 comprised 2.84 percent of the total Florida imports; coffee, which in 1939 comprised 1.9 percent of the total import traffic to that State; bananas and pineapples, which represented 10.15 percent of the traffic imported through five Florida ports in 1939; and sodium sulphate, which constituted 5.3 percent of the traffic imported through four Florida ports in 1939. Scrap iron and steel represented 5.38 percent of the export traffic from Florida in 1939 and the rates thereon bear no relation to the class rates. Movements between Panama City, Fla., and Port St. Joe, Fla., are outside the Florida arbitrary territory, and the rates thereon do not include any arbitraries.

Raw cane sugar is produced in Florida and shipped out of the State on special commodity rates which contain no arbitraries. Blackstrap molasses is produced in large quantities in Florida sugar mills and shipped to consumers in southern and official territories at rates based on percentages of first class from which the arbitraries have been eliminated. On livestock from the Southwest to Florida the rates prescribed by us do not include any arbitraries. With respect to the

north-bound rates on livestock from Florida, the carriers voluntarily agreed to eliminate the arbitraries therefrom.

On the other hand, we have from time to time since the southern revision approved the addition of arbitraries in varying amounts to prescribed commodity rates between points in the peninsula and points in southern, official, and other territories. In the case of some commodities the arbitraries were made approximately 15 percent of the basic distance scale. In other instances they are higher. A rather complete review of the cases in which arbitraries have been prescribed appears in *Fresh Meats and Packing-House Products* (1933), 191 I. C. C. 257.

Respondents stress the fact that in the eastern revision we prescribed arbitraries or differentials of approximately 15 percent for the northern part of New England (zone B) and approximately 10 percent for zone C in the northern part of lower Michigan, and take the position that, if conditions warrant the continuance of New England and Michigan arbitraries, they justify the continuance of the arbitraries for the Florida peninsula, quoting the following from page 404 of our original report in the eastern revision, 164 I. C. C. 314:

> Differences in transportation conditions between northern and southern New England justifying different rate levels have long been recognized by both Federal and State regulatory bodies. The carriers in zone B have a much lower density of traffic than those of zone A (southern New England). In this respect the situation of the northern zone is not unlike that of the Florida peninsula, described in *Southern Class Rate Investigation*, 100 I. C. C. 513. In that proceeding rates were prescribed to and from points in the peninsula based on the normal scale, plus arbitraries substantially 15 percent of that scale for the portion of the haul within the peninsula.

In the report in the eastern revision we prescribed the distance scales set forth in appendixes G and H thereto, for application within zones A and B, respectively, of New England. The appendix G scale was made about 5 percent higher than the basic eastern appendix E scale, and the appendix H scale was made 10 percent higher than the appendix G scale. The scales prescribed for zones A and B apply between points within those respective zones only, and do not apply on traffic between points in New England and points in the remainder of official territory. For application to traffic between points in zone B and points in trunk-line territory and between points in Michigan zone C and points in central territory, we prescribed the appendix E scale, plus the distance scale of arbitraries set forth in appendix F of our original report for the hauls within the zones. These arbitraries range from about 6.4 to 9.5 percent and average about 8.8 percent of the eastern basic appendix E scale for the same distance. As hereinbefore pointed out, the Florida L-2 arbitraries average about 15 percent of

the southern basic K–2 scale for the same distance. It should also be noted that the appendix J key rates prescribed in the eastern revision for application between central territory and other subterritories, including New England, contain no arbitraries.

The size of the State of Florida closely approximates that of the New England States combined. The land areas are 54,262 square miles for Florida and 53,205 square miles for New England. Florida has 5,218 miles of railroad; the New England States, 5,677 miles. In 1940 Florida originated 2,719.86 tons of freight per mile of road while the New England States originated 2,536.46 tons per mile of road. In the same year the tonnage terminated per mile of road in Florida was 2,706.92; in the New England States, 6,098.23. Total tonnage originated and terminated per mile of road was 5,426.84 for Florida and 8,634.69 for New England. There are 44 counties in Florida which lie wholly in the arbitrary territory, embracing a combined land area of 38,224 square miles. In the States of Maine, New Hampshire, and Vermont there are 30 counties lying wholly within zone B arbitrary territory, having a land area of 41,560 square miles. For the same year, the traffic density (revenue net ton-miles per mile of road) for the Florida East Coast was 590,603; for the Boston & Maine 1,259,409; the Central Vermont, 1,335,647; Maine Central, 640,764; New York, New Haven & Hartford, 4,695,763; Detroit, Toledo & Ironton, 1,199,486; Pere Marquette, 1,384,192; and New York Central, 2,695,596.

One of the contentions stressed by the State is that small industries have been handicapped by the present class-rate structure in doing business in official territory. Among the commodities mentioned are palmetto brush fiber and fiber brushes, crystallized or candied citrus fruit, furniture, and several others. With respect to these commodities respondents' records failed to disclose that as to most of them the railroads had ever been approached by either shipper organizations or shippers themselves upon the subject of rates from the peninsula producing points. In instances where they had been approached, the competitive rates of the water or motortruck carriers were found to be so low that the railroads would not undertake to meet them under any circumstances. Pursuant to requests of the shippers of crystallized citrus candy and lawn and garden furniture, the rates on these commodities within the South and from the South to the North were substantially reduced in 1942.

The following statements show the net railway operating income of the Atlantic Coast Line, the Seaboard Air Line, and the Florida East Coast, the rate of return on their recorded investment in property used for common-carrier purposes, and the deficits after fixed charges:

Period	Atlantic Coast Line			Seaboard Air Line			Florida East Coast		
	Net railway operating income	Rate of return	Deficit after fixed charges	Net railway operating income	Rate of return	Deficit after fixed charges	Net railway operating income	Rate of return	Deficit after fixed charges
		Percent			*Percent*			*Percent*	
Year 1927							$592,205	0.48	$1,774,762
Year 1928							1,426,619	1.15	1,697,425
Year 1929							1,637,961	1.33	1,325,239
Year 1930							1,040,184	.87	1,998,319
Year 1931	$4,748,109	1.57	$672,654	$5,817,039	1.90	$4,598,620	664,636	.56	2,365,046
Year 1932	108,199	.37	5,261,024	208,830	.07	9,281,174	*881,776*		3,316,630
Year 1933	4,209,811	1.47	988,935	2,622,093	.88	6,530,604	*134,910*		3,185,635
Year 1934	4,289,557	1.47	958,690	1,631,913	.54	8,028,553	225,476	.19	2,808,891
Year 1935	2,578,763	.89	2,610,224	1,501,943	.50	7,609,365	*222,593*		3,222,789
Year 1936	4,415,754	1.52	674,150	3,515,582	1.15	6,097,462	877,796	.77	2,071,631
Year 1937	4,938,774	1.70	118,263	3,753,989	1.21	4,630,279	741,578	.88	2,181,193
Year 1938	2,390,751	.81	2,659,786	1,449,486	.46	7,590,161	1,029,492	1.22	1,968,526
Year 1939	3,781,872	1.30	1,187,166	3,594,371	1.13	5,556,555	743,699	.87	2,091,032
Year 1940	3,767,234	1.28	1,051,712	4,404,333	1.36	4,973,349	985,219	1.15	1,913,930

Deficits in italics.

If these statistics are accepted at their face value, the carriers' need for additional revenues in the years shown is plainly indicated The elimination of the arbitraries would, of course, reduce these carriers' revenues to the extent that they now apply, unless additional revenues could be found to offset the loss. The carriers failed to show how much revenue is obtained by the addition of arbitraries either to the class rates or the commodity rates. No traffic test has been made, and there is no separation of the traffic and revenue statistics as between the peninsula and northern Florida and other States in which the peninsula lines operate.

KENTUCKY AND EVANSVILLE, IND.

The Commonwealth of Kentucky was not associated [96] with the Southern Governors' Conference in this proceeding and did not actively support the plea for parity of class rates in southern and official territories. It and the railroad commission of the State urged that there is no sound economic, financial, or operating reason why Kentucky should not have the same rates, classifications, and exceptions as apply in official territory, regardless of what we may do as respects southern territory as a whole. They base this upon the grounds that, with the possible exception of the short stub end of the Nashville, Chattanooga & St. Louis and Tennessee Central railroads extending a short distance into Kentucky, the operating costs of the railroads in the State are as low, and the earnings are as high, as any to be found in the country, except on the Pocahontas lines, even with which the costs and earnings of the other Kentucky lines compare favorably.

Kentucky was included within southern territory in the southern

[96] This is true also of the public authorities of the State of Virginia, on whose behalf no evidence was introduced and no brief was filed.

revision. Subsequently, in *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.* (1935), 213 I. C. C. 297, we accorded it treatment different from that in the South generally with respect to class rates to and from official territory. The effect of that decision was to reduce the class rates between interior Kentucky points and official territory to a basis approximately 15 percent higher than the basic eastern scale. The rates between official territory and points in Kentucky on the Pocahontas lines were already on the level of that scale. The intrastate rates in Kentucky prescribed by the State railroad commission, were before us in *Intrastate Class and Commodity Rates in Kentucky* (1937), 223 I. C. C. 109, but we did not require them to be changed. They are on substantially the same basis as that applicable in official territory for the distances most of the traffic in Kentucky moves, and are governed by the official classification. The only interstate adjustment of class rates in Kentucky which is on a basis different from the official territory level is that to and from stations in the State served by southern carriers. The present class 100 rates, between all points in the State with a population of 1,000 or more persons and representative cities (Boston, Mass., New York, N. Y., Philadelphia, Pa., Buffalo, N. Y., Pittsburgh, Pa., Cleveland, Ohio, Columbus, Ohio, Detroit, Mich., Indianapolis, Ind. Chicago, Ill., St. Louis, Mo.) in official territory, average 9.8 percent in excess of the rates for corresponding distances in the latter territory.

One of the principal contentions of the Kentucky interests is that railroad operating costs in Kentucky are lower than those in the remainder of the South and lower than those in the East. This contention is based upon the cost data prepared by our staff previously referred to. Cost of service is only one factor to be taken into consideration in the prescription of reasonable rates. Railroad operating costs in Kentucky are influenced in major degree by the enormous coal tonnage of the Louisville and Nashville Railroad.

Our actions in prescribing, in the eastern revision, the eastern scale of rates to points in northwestern Illinois and southern Wisconsin, and in extending, in other proceedings, the official territory basis to points not served by eastern district lines, are referred to. It is asserted by Kentucky interests that the treatment accorded Kentucky is much less favorable than that accorded southern Illinois, southern Indiana, southern Ohio, northern Michigan, New England, various other Illinois points, and Virginia and West Virginia, in which areas, it is alleged, less favorable operating conditions obtained than in Kentucky.

The Kentucky interests contend that, under the provisions of section 15a of the act, which, among other things, requires us, in the exercise of our authority to prescribe just and reasonable rates, to give due consideration, among other factors, to the effect of rates on the move-

ment of traffic, we are obliged to take due cognizance of a rate structure which has enabled intercity trucks to take over an undue proportion of the total traffic.

A witness for the State testified that the total intercity truck traffic could be loaded in the empty space of railroad cars already moving partially loaded, and that the added traffic could be handled at little cost to the railroads. Nearly 50 percent of both truckload and less-than-truckload intercity truck tonnage, and about two-thirds or more of the revenue ton-miles performed in such services, are from shipments transported for distances beyond 300 miles over routes largely paralleling railroads. The witness also expressed the view that this traffic can, as a general rule, be handled economically by rail and, generally speaking, is handled by carriers by motor vehicle only because of their opportunity to choose traffic as a result of the continuance of an outmoded railroad rate structure.

There is also a claim that the existing class rates in Kentucky have hindered industrial development in that State. Since our decision in *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.*, *supra*, (decided December 9, 1935), when interstate class rates into and from Kentucky were reduced to a basis slightly higher than the official level, the industrial development in Kentucky has been less than in Tennessee, in which the higher southern level of class rates has applied during that period. Many of the contentions of the Kentucky interests and much of the testimony introduced herein in their behalf were before us and were considered by us in the proceeding last cited.

No Kentucky shipper testified in opposition to the present adjustment. The representative of the Louisville Board of Trade asserted that the shippers and receivers of freight in Louisville have no complaint about the existing class-rate adjustment, and specifically requested us not to disturb it.

The State of Kentucky calls our attention to certain provisions of the Constitution of the United States in support of its claim to an equality of rates with official territory. The provisions in question are the first clause of section 8, article 1, requiring that duties, imposts, and excises laid and collected by Congress "shall be uniform throughout the United States," and the sixth clause of section 9 of the same article which provides that "no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another." It is urged, first, that all regulations of commerce under these sections must be uniform throughout the United States, and, second, that inasmuch as the evidence in this record establishes the fact that costs of transportation by railroad in Kentucky are no higher than they are in official territory, we must interpret and apply these Constitutional mandates in our administration of the Interstate Com-

merce Act so as to accord Kentucky rates that are no higher than those which currently apply within official territory.

In support of the foregoing position, the State of Kentucky refers to the decision of the Supreme Court in *Knowlton* v. *Moore*, 178 U. S. 41. In that case the Court reviewed the history relating to the adoption of these provisions of the Constitution; stated that, although the provision prohibiting preference between ports and that requiring uniformity of duties, imposts, and excises were one in purpose and one in their adoption, they became separated only in arranging the Constitution according to an adopted style; and concluded that the words "uniform throughout the United States" in the latter provision signify simply a geographical, and not an intrinsic uniformity.

In *Louisiana Public Service Commission* v. *Texas & N. O. R. Co.*, 284 U. S. 125, the Court had occasion to review an order of this Commission entered in *Sand, Gravel, Crushed Stone, and Shells*, 155 I. C. C. 247, 157 I. C. C. 498, whereby we prescribed rates, based on distances, for the transportation of sand, gravel, and certain other road materials in Arkansas, Oklahoma, Texas, and a part of Louisiana, but provided that the rates to and from certain points on the east bank of the Mississippi River were to be determined by adding to the distance rates 8 cents per ton. It was contended on behalf of Louisiana ports on the east bank of the river that the provision for the addition of the latter amount to the distance rates to and from those ports constituted a preference of Texas ports over those of Louisiana, caused by a regulation of commerce, in violation of the port preference clause of section 9, article 1, of the Constitution. In rejecting this contention, the Court said, at page 131:

> The specified limitations on the power of Congress were set to prevent preference as between States in respect of their ports or the entry and clearance of vessels. It does not forbid such discriminations as between ports. Congress, acting under the commerce clause, causes many things to be done that greatly benefit particular ports and which incidentally result to the disadvantage of other ports in the same or neighboring States. The establishing of ports of entry, erection and operation of lighthouses, improvement of rivers and harbors, and the providing of structures for the convenient and economical handling of traffic are examples. *Pennsylvania* v. *Wheeling & Belmont Bridge Co.*, 18 How. 421, 433–435. And see *Armour Packing Co.* v. *United States*, 209 U. S. 56, 80.

In *Armour Packing Co.* v. *United States*, *supra*, the Court said:

> The fact that regulation, within the acknowledged power of Congress to enact, may affect the ports of one State more than those of another, cannot be construed as a violation of this constitutional provision.

In our opinion, the particular provisions of the Constitution just referred to, as construed by the Supreme Court, do not require that freight rates be the same in each State or section of the United States, regardless of differences that may exist in the circumstances and con-

ditions generally recognized as controlling factors in the making and regulation of rates.

The traffic manager of the Evansville, Ind., Chamber of Commerce requested that the level of the class rates in southern territory be reduced. He also complained that St. Louis, Mo., has some advantage over Evansville in class rates from those points to destinations in the Southeast and Southwest. The nature of the complaint, however, cannot be determined upon the record. Evansville is a border point on the Ohio River between southern and official class-rate territories. Class rates between Evansville and points in official territory are on the official territory level; those between Evansville and points in southern territory are on the southern territory basis. Thus, shippers at Evansville are in a position to ship into either territory on the level of class rates that applies within the destination territory.

OFFICIAL TERRITORY

The volume of traffic moving on class rates within official territory is much greater than in any other territory. Considering, first, less-than-carload traffic as class-rate traffic,[97] the revenue therefrom in 1941 was as follows:

	Revenue
Official territory	$150,263,282
Southern region	55,899,927
Western district	100,678,278

Second, much more freight moves on class rates or exceptions to the classification in official territory than in other territories. Third, the volume of interterritorial traffic handled by official respondents is greater than that of any other group of carriers, both as to the amount that moves on class rates or on exception ratings, or on all kinds of rates.

A study testified to by a member of our staff shows the distribution of carload traffic in each statistical commodity group by territorial movement on May 27 and September 23, 1942. Of all carloads transported on those days, 49.2 percent originated in official territory and 54.2 percent terminated there. Official territory originated 132,129 carloads, of which 111,914 carloads or 84.7 percent terminated there, and 15.3 percent terminated in other territories. The distribution of traffic on the two test days in southern, western trunk-line, and southwestern territories was as follows: southern territory originated 42,161 carloads, of which 15,989 carloads, or 37.9 percent, terminated in official territory; western trunk-line territory originated 45,109 carloads, of which 8,246 carloads, or 18.3 percent, terminated in official territory;

[97] This assumption is not entirely warranted because much less-than-carload traffic moves on rates other than class rates, particularly in southern territory.

southwestern territory originated 22,341 carloads, of which 5,833 carloads, or 26.1 percent, terminated in official territory.

In the States wholly within official territory, more interterritorial traffic is terminated than originated, except tonnage in the statistical group designated under manufactures and miscellaneous. Of the total tons in that group originated in the United States, 58.88 percent originates in the States in which the official classification applies; and of the total tons in that group terminated in the United States, 55.87 percent terminates in those States. Official territory carriers are dependent, therefore, to a very large extent upon the revenues they receive from the class rates in issue and the rates definitely related thereto.

The carriers in official territory argue that the maintenance of higher class rates in other territories than apply within official territory cannot constitute undue preference or prejudice, inasmuch as the railroads that serve official territory do not control the rates applicable within other territories. They do not deny, however, that they are jointly responsible with the railroads in other territories for the maintenance of interterritorial rates.

Trunk line and New England territories.—Much of the evidence and many of the contentions of official territory interests, which included public officers, public authorities, shippers, and shipper organizations in the States of New York, New Jersey, Pennsylvania, Maryland, and Delaware, have previously been discussed. A contention already considered herein is the alleged injury to other sections of the country that may result from a parity of class rates in the South and the North, without a parity of rates on in-bound raw materials in the two territories. It is claimed that such a situation would be unjust because: (1) The South has much lower rates on in-bound raw materials and low-grade freight; (2) equalization of the class rates alone would give the South a preferential rate basis and discriminate against the North; (3) equalization by reduction of the southern class rates would adversely affect the revenue of southern carriers; (4) an increase in the official territory class rates to accomplish uniformity, with no corresponding change in the raw material rates in the South, would result in an increase in rates which move an important part of official territory traffic in order to accomplish a parity which would affect only a very small percentage of the traffic in the South, and at the same time would leave the South with the benefit of its lower raw material rates on a large volume of its traffic.

We are asked not to ignore the effects that a possible shift of industry from the North to the South might have upon communities and populations of the North, the great consuming territory and market for all territories. Some industries which were for many years of great importance in official territory have already transferred all, or a substantial portion, of their operations to the South. The greater part of the textile industry has migrated from the North to the South, leaving New England communities with large portions of their population without employment. New York has also lost many of its textile mills to the South. At one time, the stove manufacturing industry was an important one in New York State, but its operations have greatly diminished; and many companies in that industry have gone out of business, while the stove industry of the South has grown. Industries in New York which have been affected by competition of producers elsewhere are the pipe industry, and the industry manufacturing grey iron products which uses pig iron. Jamestown, N. Y., was formerly a large center for the manufacture of furniture, but such industry in that city has been greatly reduced during the past 20 years, while the furniture industry of the South has grown. In Jamestown, 26 furniture manufacturing concerns have gone out of business during that period. Those still in business there meet competition in the northeastern portion of the United States, their principal market, from manufacturers at North Carolina points. The number of wage earners in the furniture industry decreased 33 percent in the North, compared with an increase of 18 percent for 6 southern States. The wage earners in the stove and other heating- and cooking-appliance industries decreased 21 percent in the North and increased 39 percent in the South during the decade ended in 1939.

Central territory and Wisconsin.—Interests in central territory, which included the States of Ohio, Indiana, Illinois, Michigan, and Wisconsin, and shippers and shipper organizations in those States, contend that the rate uniformity sought herein is not warranted and that this proceeding should be dismissed. They consider the rates in official territory as the most successful in surviving changes in the transportation situation, brought about, principally, by the advent of common and contract motor carriers and the private operation of motor vehicles since the class-rate levels were prescribed.

These interests are of the view that if the intraterritorial class-rate levels in southern, southwestern, and western trunk-line territories are reduced so that the total revenue of the carriers within such territories falls short of meeting their financial needs, any deficiency of revenues should be met by increases in other rates within, or to or from,

such other territories, and not by adjusting divisions of rates to offset such reductions, or by requiring carriers and shippers in official territory to assist in carrying the transportation burden in such other territories.

They contend that, if the present rates are found to be unlawful, interterritorial rates generally should not be determined by applying a percentage to the rates in another territory. Such a method, in their opinion, presupposes the rate maker can start with a class-rate structure which is correct for the lowest-rated territory and increase the scales in such structure by given percentages to produce scales appropriate for other territories; and that it assumes such action allows for, and reflects in the resulting rates, differences in transportation conditions in the respective territories, as well as differences in the part which the class-rate traffic is called upon to bear in contributing to the railroads' required revenues.

In support of their view, they argue that the method described is fallacious because there are several basic rate structures under consideration rather than a single one, and that each territory has its own peculiarities and its own particular problems. In order to meet such conditions the basic structure would have to reflect the conditions which prevail in other territories. Thus, at present, the progression in the western trunk-line scales is maintained for the longer distances at a faster rate than in the eastern scale. This is also true of the so-called "basic" scale used in the western revision to construct interterritorial rates between official and western trunk-line territories. The purpose of the faster rate of progression was to exact from the longer hauls, particularly to and from points in the western part of western trunk-line territory, an adequate measure of revenue and to lessen somewhat the drastic nature of the reductions resulting from the rates prescribed in the western revision.

With respect to interterritorial rates, the central territory States and shippers take the position that such rates should reflect the class-rate levels applicable within the respective territories in proportion to the length of the haul in each territory; and they prefer to use as the formula for such rates the so-called cottonseed formula prescribed in *Cottonseed, Its Products, and Related Products*, 188 I. C. C. 605 (subsequently rescinded in 208 I. C. C. 177, because of the expense and work required to compute distances and rates in accordance with the formula). They contend that if new interterritorial rates are prescribed, the rates should be on the same level in both directions.

Official territory scale.—In the eastern revision (164 I. C. C. 314, at page 393), we said:

> Neither in measure nor in progression has the scale been modeled after the other class-rate scales which we have had occasion to prescribe, but the progression is similar to that of the new western trunk-line scales. It so happens that the first-class rates average about 80 per cent of those in the new western trunk-line scale No. 1, 72 per cent of those in the southern scale, and 66 per cent of the southwestern first-class rates. These percentages are purely fortuitous and should not be regarded as an index of comparative general rate levels or transportation costs as between the various territories. The scale has not been devised with the object of arriving at any particular rate for any given distance or between any given points. It represents our best judgment upon the record before us, giving consideration to the revenue situation, to the character of traffic which moves upon class rates in official territory, and to the characteristics of the general rate structure in that territory. Judged alone by the class rates which exist in other parts of the country, a considerably higher scale would be warranted.

A comparative study and analysis of the construction of various class-rate scales prescribed by us shows that usually they were of a pattern in which the greatest rate of progression was in the first 75 miles. The purpose was to reflect the relatively expensive service furnished by way-freight trains. Beyond 75 miles the progression was at a more moderate rate to reflect the relatively lower cost of through freight service. In the longer reaches of the scales there was a still lower rate of progression for the purpose of permitting traffic to move long distances.

All scales prescribed by us do not by any means always follow this pattern, and even when the general pattern is observed, there are variations as to the distances at which the rates of progression break and in the rates of progression intended to be adapted to the conditions for which the scales have been provided.

The eastern class-rate scale is the lowest intraterritorial scale involved in this proceeding. It was originally prescribed for distances up to 900 miles and later extended to apply for distances up to 1,500 miles. The mileage blocks are in units of 5 miles up to 100 miles, 10 miles between 100 and 240 miles, 20 miles between 240 and 800 miles, and 25 miles between 800 and 1,500 miles. The initial rate in the scale for 5 miles was 30 cents. The progression of the scale, as originally prescribed, was 1 cent and sometimes 2 cents for each 5 miles increase in distance up to 100 miles; between 100 and 240 miles the progression was usually 2 cents but sometimes 1 cent for each 10 miles; and between 240 and 800 miles the progression was usually 2 cents and sometimes 3 cents for each 25 miles. The progression has been somewhat changed by the 10-percent increase in

1938. For distances up to 100 miles, in two instances, the increase for 5 miles has become 3 cents. In other instances, the progression has become 1 cent greater than before the increase of 1938. Between 700 and 800 miles the increase is 11 cents and remains 11 cents for each 100 miles thereafter. The curve of the scale therefore becomes a straight line beyond 700 miles. The following table shows the eastern class-rate scale, as increased in 1938, the percentages of actual increase for each 100 miles, and the successive differences in the percentages of actual increase:

Eastern class-rate scale

Miles	Rate	Actual increase		
		Amount	Percent	Differences[1]
	Cents	*Cents*		
5	33			
100	62	29	87.9	
200	80	18	29.0	58.9
300	96	16	20.0	9.0
400	109	13	13.5	6.5
500	122	13	11.9	1.6
600	135	13	10.7	1.2
700	149	14	10.4	.3
800	160	11	7.4	[2]3.0
900	171	11	6.9	.5
1,000	182	11	6.4	.5
1,100	193	11	6.0	.4
1,200	204	11	5.7	.3
1,300	215	11	5.4	.3
1,400	226	11	5.1	.3
1,500	237	11	4.9	.2

[1] Differences in successive percents of actual increase.
[2] Irregularity.

One of the criteria of a smooth progression in a rate scale is that each successive percent of increase in the rate, at each 100-mile interval, for example, shall be less than the one immediately preceding, and also that the differences between successive percents of increase shall not progress in an ascending order. Between 700 and 800 miles the difference in the percents of increase shows an increase instead of a decrease.

Relative earnings.—The relative earnings in the eastern district as indicated by rates of return and operating ratios (freight), have not been as favorable as those in the southern region during the period 1936–43, inclusive, and not as favorable as those in the western district in the years 1942 and 1943, as shown in the following table. The rates of return and operating ratios (freight) are also shown for the Pocahontas region and the regions which compose the western district. The southwestern region corresponds substantially with southwestern territory.

Rate of return based on the net railway operating income and the book investment (increased for cash, materials and supplies) and operating ratio—freight

[The figures shown are percentages]

	1936	1937	1938	1939	1940	1941	1942	1943
Eastern district								
Rate of return	2.67	2.27	1.26	2.34	2.66	3.62	4.90	4.32
Operating ratio, freight	64.95	67.80	68.98	64.83	63.92	63.04	61.93	60.23
Southern region								
Rate of return	2.52	2.35	1.90	2.80	2.57	4.94	6.81	5.73
Operating ratio, freight	65.38	67.77	66.73	64.99	65.34	61.07	56.84	59.41
Pocahontas region								
Rate of return	7.58	6.61	4.54	5.89	6.21	6.67	5.29	5.22
Operating ratio, freight	47.04	50.63	53.59	50.71	49.77	48.12	49.62	52.86
Northwestern region								
Rate of return	2.00	1.90	.86	1.77	2.44	3.62	4.66	5.41
Operating ratio, freight	64.86	66.42	69.05	64.91	61.94	58.93	56.63	60.52
Central western region								
Rate of return	1.81	1.54	1.25	1.67	1.96	3.13	6.14	4.95
Operating ratio, freight	64.97	67.32	65.47	64.23	63.82	62.37	55.55	59.61
Southwestern region								
Rate of return	1.86	1.81	1.08	1.41	1.74	3.52	6.71	5.56
Operating ratio, freight	65.60	66.84	68.22	66.95	65.92	60.85	55.26	57.91
Western district								
Rate of return	1.88	1.71	1.09	1.65	2.06	3.36	5.80	5.22
Operating ratio, freight	68.07	66.93	67.13	65.[illegible]	63.63	60.98	55.79	58.47

NOTE.—Source: Statistics of Railways.

WISCONSIN

Separate briefs were filed by the Public Service Commission of Wisconsin and the Wisconsin Manufacturers Association, on behalf of Wisconsin shipping interests generally, and by Green Bay Association of Commerce, on behalf of interests located in Green Bay and De Pere and nearby Wisconsin points, including Oconto, Algona, and Kewaunee and the Door County Peninsula. These interests have joined generally in the general brief filed by the Central Territory Rate Conference, and Green Bay and associated interests have joined in the brief of the Wisconsin commission and Wisconsin Manufacturers Association.

The Wisconsin commission reiterated its belief that there was no such urgency for general changes in the class-rate structures of the country as to justify a general investigation and proceeding of this character, as originally stated in motions previously filed herein, in which it joined, to dismiss the proceeding, or to defer it for the period of the emergency. It does not desire to be understood as advocating general changes in class rates or class-rate structures and would welcome an order deferring any further procedure herein until after the war.

While these parties are not entirely satisfied with the present class-rate adjustment to and from Wisconsin (except as to Illinois Freight Association territory), they do not find such acute dissatisfaction and complaint as would warrant a general revision, or drastic changes, at this time. In the event that we prescribe a general revision of class rates, they urge that Wisconsin rates be considered and treated along with other rates, and that the basic eastern scale should be extended to embrace at least that part of Wisconsin south of a line from Green Bay to the Twin Cities. As to interterritorial rates, they are of the opinion that maximum class rates should be constructed on the cottonseed formula, previously referred to herein.

Wisconsin's economic life depends principally on industry, agriculture, and forestry. Industry has become the most important. In 1909, manufacturing added $686.6 millions of value to the State's raw materials, as compared with a value of $304.5 millions for its products of agriculture, forestry, and fishing. Mechanical and manufacturing occupations accounted for 329,015 workers in 1940, as compared with 275,164 workers in the three other occupations named.

Eliminating Cook County in Illinois, in which Chicago is located, and Wayne County in Michigan, in which Detroit is situated, and Milwaukee County in Wisconsin, in which Milwaukee is located, statistics for 1939 show the following results with respect to the value of manufactured products: Wisconsin, $1,008 millions; Illinois, $1,508 millions; Michigan, $1,629 millions. The comparable figure for Indiana, with her foremost county excluded, was $1,408 millions.

Industrial development in Wisconsin has occurred largely in the southern half of the State, and principally in extended zone C and that part of the State (the southeastern corner) in Illinois territory. We have recognized in previous decisions that industrial activity in these two areas, namely, extended zone C and southeastern Wisconsin, is comparable with that in central territory, and have commented on the favorable traffic and transportation conditions therein. To a lesser degree, industrial activity prevails in southern Wisconsin, particularly south of a line drawn from Green Bay to the Twin Cities. In the latter area are 30 of the 33 Wisconsin cities, each having a population of more than 10,000 persons. This part of the State produces $1,126 millions of the State's $1,138 millions worth of manufactured products.

The term "southern Wisconsin," as used by these proponents, comprises all Wisconsin counties lying principally south of the line of the Chicago & North Western Railway from Green Bay through Wausau to Marshfield, thence the Minneapolis, St. Paul & Sault Ste. Marie Railway through Owen and Chippewa Falls to the Twin Cities, and the adjoining counties of Minnesota and Iowa bordering the Mississippi River. The above-described territory in area, popula-

tion, and industrial development is almost a counterpart of the State of Indiana. The similarity is shown in the following statistics:

	Southern Wisconsin	Indiana
Area, square miles	39,530	36,205
Population (1940)	3,854,280	3,427,796
Urban population [1] (1940)	2,491,033	1,867,712
Manufacturing establishments	8,011	4,337
Wage earners (1939)	345,954	277,467
Industrial wages paid (1939)	$313,853,178	$345,479,193
Value of manufactured products	$2,066,000,000	$2,228,000,000
Value added by manufacture	$983,000,000	$970,000,000

[1] Residing in cities of 10,000 or more persons.

The consist of traffic transported by rail to and from Wisconsin compares favorably with that in any of the major rate territories. A comparison of the composition of traffic, made by adopting the division between low and high-grade commodities used in a tentative order prepared by our staff for the purpose of obtaining a traffic test (the traffic test was later abandoned), shows that, during the 3-year period 1938 to 1940, 40.1 percent of the rail tonnage originating in Wisconsin was of the higher grade, as compared with 21.2 percent in the entire country, 29.2 percent in the eastern district, 17.3 percent in the southern region, and 18.1 percent in the western district. With coal and iron ore eliminated, the percentages of high-grade traffic to total traffic are as follows:

	Percent
Wisconsin	44.1
United States	36.2
Eastern district	51.3
Southern region	27.1
Western district	24.4

Measuring the quality of the traffic by all commodities, the respective percentages of total manufactures to total traffic originated during the same period are:

	Percent
Wisconsin	52.0
United States	32.4
Eastern district	38.8
Southern region	30.9
Western district	33.5

Wisconsin is a border State and, in this respect, differs from States more particularly identified with one-rate territory. Unusual problems of class-rate construction are frequently presented in the case of border States. As to Wisconsin, such problems arise particularly in respect of class rates between Wisconsin and official territory, including Illinois territory.

The State is served by western trunk-line railroads, except the west-bank Lake Michigan car-ferry ports, which are the western termini of

certain official territory railroads. The southeastern part of the State is under the jurisdiction of the Illinois Freight Association and is a part of official territory. Class rates to and from this section are constructed the same, and have the same level, as those applying to and from Illinois. The west bank of Lake Michigan, north of Illinois territory, has always been considered as within official territory on traffic moved cross-lake via car-ferry routes.

At present the official classification governs, (1) class rates between Wisconsin and official territory east of the Illinois-Indiana State line in both directions, (2) class rates on Wisconsin intrastate traffic, and (3) between southeastern Wisconsin and Illinois. The western classification applies between Wisconsin and Illinois and between Wisconsin and other portions of western trunk-line territory, except as previously indicated.

The Wisconsin class-rate structure has also been influenced by adjustments made in class rates between Duluth and the Twin Cities and official territory; and the last-mentioned rates have been affected by lake-rail routes and rates, and by the volume and nature of the interterritorial traffic to and from these points.

The contention is made, and it is justified by the facts, that the class-rate structure between Wisconsin and official territory has been and is within the sphere of influence of the official territory rates.

Specific proposals advocated by the Wisconsin interests, in the event there is a general revision of class rates required, are the following:

1. Elimination of the Zone C differentials.

2. Extension of the basic official territory boundaries to include west-bank Mississippi River cities from Dubuque, Iowa, to Minneapolis, Minn., and the intermediate territory in Wisconsin and Minnesota on and south of the Minneapolis, St. Paul and Sault Ste. Marie Railway from Minneapolis through Eau Claire and Owen, Wis., to Wausau, and the line of the Chicago and North Western from Wausau through Shawano to Green Bay.

3. If it should be found that traffic and transportation conditions in Wisconsin north of the line described do not justify the same level of rates as in the territory south of the line, there might be provided a system of differentials which would preserve the same form of rate structure and harmonize the rates from both sections of the State.

The above proposals are urged "not for the mere sake of uniformity," but because Wisconsin interests believe that the bases proposed reflect traffic and transportation conditions in the State, and because experience has shown that the official classification and class-rate structure can be fairly, reasonably, and successfully applied to the traffic.

Green Bay.—In 1940, the population of Green Bay and nearby communities, respectively, were as follows: Green Bay, 46,235; De Pere, 6,373; Kewaunee, 2,583; Sturgeon Bay, 5,439; and Oconto, 5,362. Green Bay is in eastern Wisconsin at the mouth of the Fox River and on Green Bay, an arm of Lake Michigan. It is 112 miles north of Milwaukee, 31 miles west of Manitowoc, and 36 miles northwest of Kewaunee, all car-ferry ports. It is served by the Chicago & North Western, Chicago, Milwaukee, St. Paul & Pacific, and the Green Bay & Western railroads. Green Bay and De Pere have deep draft channels. Six paved highways converge at Green Bay, and approximately 25 common carriers of property by motor vehicle, 8 motorbus lines, and numerous contract carriers by motor vehicle operate from the city in all directions. It is a port of call for 4 large steamship lines and many other carriers by water.

Competition of Green Bay manufacturers is for the most part with manufacturers in official territory. For example, cheese, of which Green Bay is the largest single concentration and shipping center in the United States, is manufactured also in New York State. Cranes, derricks, power shovels, and other machinery is manufactured at Milwaukee, Wis., Chicago, Ill., Lima, Marion and Lorain, Ohio, Erie, Pa., and other official territory points. Manufacturers of canned vegetables, pickles, and fruits at Green Bay, Sturgeon Bay, and Oconto must meet the competition of manufacturers of like articles in Illinois and official territory, as the principal markets are in that territory.

Next to Milwaukee, Green Bay is the largest jobbing and distributing point in the State. Groceries, hardware, produce, building supplies, plumbing supplies, iron and steel, mill supplies, and electrical supplies constitute the principal articles sold. Most of these commodities originate in official or Illinois territory, and Green Bay jobbers must meet the competition of jobbers and wholesalers who are located generally at Milwaukee, Chicago, and Detroit. It is also one of the largest merchandise and bulk storage warehousing points on the Great Lakes.

Class rates and the rates on certain commodities between Green Bay and points in official, Illinois, and western trunk-line territories were prescribed by us in the western revision on the following basis:

Between Green Bay and Ohio and east thereof, except Illinois territory, key-point class rates were established on the level and basis of rates prescribed in the eastern revision, and are governed by the official classification and exceptions. Between Green Bay and points in official territory, west of Ohio, distance rates apply. Zone C was extended to include Green Bay and Wisconsin points south thereof to the northern boundary of Illinois territory, and the zone C arbitraries for the portion of the haul in that zone are included in the rates.

Between trunk-line and New England territories and west-bank Lake Michigan ports, rates were fixed in the eastern revision; later, the carriers voluntarily reduced rates from and to such ports and, at the same time, made similar adjustments in the Green Bay rates.

Between Green Bay and other points in extended zone C territory and Illinois territory, rates were fixed also on the basis of the eastern scale plus zone C arbitraries for that portion of the haul north in extended zone C. The western classification was prescribed on this traffic. Because of differences in the applicable classifications, minimum rate sections in the tariffs, and certain exceptions to the classification are required.

Class rates between points in western trunk-line territory, including Green Bay and other extended zone C points in Wisconsin, were prescribed on a distance basis. Appendix L arbitraries, in the report in the western revision, are added to the basic scale for the portion of the distances traversed in extended zone C territory. Western classification and exceptions apply.

Between Green Bay and southern territory, including the Mississippi Valley, the class rates were prescribed in *Western-Southern Class Rates, supra.* They are governed by southern classification, which applies in both directions, and by exceptions to that classification which are applicable from and to Illinois territory and the South. We also prescribed key-point rates on the basis of rates applicable between Illinois and central territory, on the one hand, and southern territory, on the other, increased by the extended zone C arbitraries prescribed in the last-mentioned proceeding for the distance through the latter territory. The rates between Green Bay and points in southwestern territory were prescribed in the southwestern revision, especially the eighth supplemental report, 164 I. C. C. 565. Green Bay is in group 45, under which a 20-cent first-class arbitrary over Milwaukee is added to rates to and from points east of the Neosho-Laredo line, and 11 cents first-class to rates to and from points west of that line. Western classification and exceptions apply in both directions.

Rail-lake-and-rail, rail-and-lake, and lake-and-rail rates between official territory and Green Bay were prescribed by us in *Lake and Rail Class and Commodity Rates*, 205 I. C. C. 101, and supplemental orders. The differential under all-rail rates is 12 cents first class with relative amounts on the lower classes. The rates apply through the ports of Milwaukee and Chicago, and no direct rates to Green Bay Harbor have been established. The lake lines reach the port of Green Bay in connection with their contract-carrier service, but not in connection with common-carrier service.

Green Bay is nearer to Lake Erie and Lake Ontario ports than Milwaukee, Chicago, and Duluth by 61, 126, and 219 miles, respectively. The distance via the route through Green Bay figured by rail-lake-and-rail to Minneapolis and St. Paul is 98 miles shorter than via Milwaukee, 243 miles shorter than via Chicago, and 81 miles shorter than via Duluth.

In formulating our conclusions and findings, we are requested to consider specifically the situation prevailing at Green Bay. No separate finding dealing with that city individually is requested, because the findings which have been advocated in the more general briefs are adequate to cover that situation. If we fail to make the findings sought in the more general briefs, we are requested to recognize the situation at Green Bay by a special finding that the official territory basis of class rates shall be extended to and from that community.

WESTERN TRUNK-LINE TERRITORY SHIPPER INTERESTS

Inasmuch as most of Wisconsin is in western trunk-line territory from the standpoint of interstate class rates, evidence pertaining principally to that State as a whole will be discussed under this title. As explained, the southeastern and eastern portions of the State are now on the same rate levels as official Illinois territories south and east thereof.

The railroad commissions of every State in western trunk-line territory introduced evidence, except Michigan, Colorado, and Wyoming, only portions of which States are in that territory. Missouri's evidence was not introduced for the purpose of showing unlawfulness in the class rates. Most of the participating State commissions joined in the preparation and presentation of analyses of the ratings in the classifications and classification exceptions. All shipper interests oppose the prescription of minimum class rates; all want the railroads left completely free to meet competition from whatever source. All oppose changes in their present commodity rates that may be designed to compensate for any readjustment required in class rates.

As indicated in the statement of positions of the parties, all participating urge uniformity in classification ratings, except the Wisconsin commission and interests; and all seek class rates based on the eastern scale for application throughout western trunk-line territory, and between that and the other territories, except Wisconsin, Missouri, and Colorado. The fact is emphasized that no railroads terminate at the Mississippi River from south of Twin Cities to north of St. Louis, about 500 miles, the greater extent of which is the dividing line between official-Illinois territories and zone I.

Although not entirely satisfied with the present rate bases, and favoring discontinuance or postponement of the investigation, Wis-

consin and Missouri ask that, if we readjust class rates generally, the interstate rates within their States, and between them and official-Illinois territories, be made according to the eastern scale. As to other interterritorial rates, Wisconsin suggests the use of the so-called cottonseed formula, and, secondly, the laminated formula, applied to the rate levels in the respective territories. In fixing the short-line distances to be employed in arriving at interterritorial rates affected thereby, Wisconsin asks that we adhere to our practice of regarding those over car-ferry routes across Lake Michigan the same as over rails. Missouri is of the opinion that cost studies are unreliable, and that the results they produce can play but a minor part in the actual fixing of rates.

Kansas City prefers to retain its present interstate class rates if reductions in them would entail increases in its commodity rates on livestock, grain, coal, and other heavy-loading commodities. It is most interested in preserving its milling industry. It declares that rates cannot be made on costs alone, in disregard of other factors.

Colorado expressed the view that class-rate uniformity on the eastern scale would reduce the revenues of western railroads too drastically. While the Colorado commission suggests no rate level, a large manufacturer of iron and steel articles near Pueblo, Colo., which ships only a small proportion of its products to these western territories on class rates subject to classification ratings, urges the abolition of zone III and the expansion of zone II from the Missouri River to the Rocky Mountains and over the entire Southwest, with a rate level of 130 percent of the eastern scale.

If a uniform rate level cannot be prescribed, South Dakota suggests that the scale for zone I be made no higher than the eastern scale, that those for zones II, III, and IV be graded upward therefrom, and that the scale for zone IV be made not in excess of 130 percent of the eastern scale.[98]

In any event, Topeka and Wichita, Kans., ask that they be accorded the same rate level as may be prescribed for zone I.

Western trunk-line shipper interests request that, if the class rates are reduced, the burden of compensating for the loss in railroad revenues should not be shifted to agricultural products and livestock and products by increasing the commodity rates thereon.

Every western trunk-line State and interest is striving toward greater industrial development, claimed by most of them to be retarded by the existing interstate class-rate structure, but some concede that rates on the eastern scale alone would not accomplish that objective. Much of the territory is sparsely settled, and all is largely agri-

[98] Zone IV, in which the present interstate scale of maximum rates is 115 percent of that for zone III, lies west of the territorial scope of this investigation.

cultural, facts well known and borne out by United States census data. The rural population in 1940 of the west-north-central division, which includes all western trunk-line States except upper Michigan, Wisconsin, Wyoming's Cheyenne corner, and eastern Colorado, was 55.7 percent of the total population, the percentages in the individual States ranging from 48.2 in Missouri to 79.4 in North Dakota; and in Wisconsin and all Colorado 46.5 and 47.4 percent, respectively.

It appears that some parts of western trunk-line territory are nearing their maximum absorption of population in agricultural pursuits. Therefore, the territorial interests seek to expand their industries and encourage new ones in order to afford employment for growing populations; but these interests disclaim any desire to attract manufacturers now established in official territory. Although the population of the territory as a whole increased slightly, 1940 over 1930, the percentages being 1.7 in the west-north-central division, 8.4 in Wisconsin, and 6.8 in Colorado, percentage decreases occurred in 4 States, namely, 5.7 in North Dakota, 7.2 in South Dakota, 4.5 in Nebraska, and 4.3 in Kansas. In October 1942, North Dakota estimated a further decline in its population of nearly 100,000, or to about 20 percent below 1930. The reasons therefor are the continued unfavorable conditions in agriculture,[89] lack of manufacturing development, no war industries, and the needs of the armed services.

Small or very slight decreases, 1940 under 1930, occurred also in the population of some cities of 25,000 inhabitants, or more, in these States, such as Oshkosh and Superior, Wis., Duluth, Council Bluffs, Iowa, Kansas City, Mo.-Kans., and St. Louis. Of these, Oshkosh and St. Louis already have the official territory basis of class rates to and from that territory.

Manufacturing.—In an investigation like the present one, the relative extent and importance of manufacturing industry in the various territories are entitled to consideration greater than ordinarily warranted, because manufactured products contribute to rail tonnage, moving at class rates, much more heavily than do the products that fall in the four other statistical groups of carload commodities.

As one proceeds from official territory westward into western trunk-line territory, manufacturing thins out. The change is less marked in southern Wisconsin, southeastern Minnesota including Twin Cities, in certain parts of Iowa at or near the larger cities, and at cities along the Missouri River through Missouri and from Kansas City to Sioux Falls, S. Dak. Substantial manufacturing takes place also in cities of southeastern Nebraska and eastern Kansas. Official-

[89] The value of farm lands and buildings in North Dakota dropped to about 490 million dollars in 1940, representing a loss of approximately 1 billion dollars below that of 1920.

Illinois territories are important sources from which western trunk-line territory manufacturers draw in large quantities many of their supplies of raw materials, semifinished materials, and parts.

While Wisconsin's economic life depends fundamentally on industry and on agriculture and forestry, industry has become of greater importance. In 1939 the value added to raw materials by manufacture was $686,600,000, as compared with $304,500,000 worth of products of agriculture, forestry, and fishing. Wisconsin ranked tenth among all States of the Union in value of manufactured products.

Every county in Iowa has manufacturing, but in a number of them the value of products in 1939 was less than $1,000,000 per county.

North Dakota in 1939 had only 350 manufacturing establishments doing a business of $5,000 or more annually. Those establishments added, to the raw materials used, a value of $11,000,000. In only 2 counties, those containing Fargo and Grand Forks, did the wage earners engaged in manufacturing exceed 250. North Dakota is primarily an agricultural State, as shown by the fact, among others, that from 1928 to 1940, inclusive, 82.5 percent of all carloads originated consisted of products of agriculture and animals and products, while its originated manufactures and miscellaneous represented only 8.3 percent. In 1940, the latter group of commodities produced 7,918 carloads originated, about 11 percent of the total number of carloads originated, in contrast with 41,955 carloads terminated, or 44.4 percent of the total terminated.

Nebraska adverts to the manufacturing possibilities of the grain-producing States of the West generally, and of its State particularly. It has provided a research program to find ways and means of utilizing Nebraska's raw materials, especially its grain surplus. The objective is to create employment for the many people now leaving the State for industrial centers elsewhere.

Nebraska seeks no preferential freight-rate treatment in order to insure success of its planned industrial development, but asks for a rate structure that will enable it to reach markets on an equality with competitors. It asserts that freight rates often prove to be artificial barriers that curtail, if not absolutely destroy, the possibility of, the establishment of new industries in the State. In envisioning the manufacturing possibilities of the grain-producing States, Nebraska speaks of freight rates in a generic sense, and not specifically of the class rates in issue.

In the following table are set forth certain statistics for 1939 pertaining to manufacturing, in establishments doing an annual business of $5,000 or more, performed in most States of western trunk-line territory compared with States in central territory:

Manufacturing data for 1939

State	Establishments		Wage earners averar	Wages [2]	Value of products [2]	Value added by manufacture	
	Number	Index [1]				Amount [2]	Index [1]
Western trunk-line territory:							
Wisconsin	6,717	92	200,897	$231,947	$1,604,507	686,305	89
Minnesota	4,008	103	79,753	96,887	845,772	310,628	94
Iowa	2,670	82	65,314	73,466	718,532	244,795	95
Missouri	4,796	94	178,538	190,736	1,388,056	587,962	94
Kansas	1,494	80	31,614	36,938	404,354	118,952	71
Nebraska	1,161	80	18,810	20,624	273,525	69,087	73
South Dakota	468	93	5,536	6,036	81,172	19,955	121
North Dakota	350	109	2,639	2,771	43,767	11,102	90
Central territory:							
Illinois	12,980	92	896,473	750,239	4,794,861	2,201,595	92
Indiana	4,337	91	277,467	345,475	2,227,648	970,212	112
Ohio	10,070	90	598,397	812,676	4,584,666	2,125,474	92
Michigan	6,311	113	522,243	789,976	4,348,223	1,798,404	94

[1] Index number, using the year 1925 as 100 to indicate relative increase or decrease.
[2] Stated in thousands of dollars.

The number of wage earners, aggregate wages, value of products, and value added by manufacture, in every State listed in the foregoing table, fell sharply in 1935 below 1925, rose in 1937—much more, relatively, in the central territory States than in the western States—and, in 1939, in all States declined by varying percentages.

The data above and other pertinent evidence indicate that manufacturing in western trunk-line territory, particularly beyond the tier of States bordering the Mississippi River, is not nearly so extensive or diversified as in central territory.

Certain other economic data.—These are based on 1939, except that data for 1940 are used with respect to the first two of the following items. Population and effective buying income were less in western trunk-line than in central territory States. A survey by counties shows that farm income from all sources was greater in southern Wisconsin, southern Minnesota, and Iowa, and less in other parts of western trunk-line territory, than in central territory; that income from farm crops was larger in certain parts of western trunk-line than in central territory, but in no area of similar extent in the former did it exceed that in the north-central portion of Illinois; that income from livestock in Iowa and certain other parts of western trunk-line territory exceeded that in central territory; that income from dairy products (milk, cream, butter, and cheese) was much greater in Wisconsin, and in less degree in southern Minnesota and northern Iowa, than in central territory; that income from poultry and eggs was higher in Iowa and certain other parts of western trunk-line than in central territory; and that volumes of sales in the wholesale and retail trades were much less in western trunk-line than in central territory.

Railroad operating statistics and costs.—Minnesota introduced evidence designed to show that conditions and costs of operations of class

I railroads in its own State and, when aggregated with Iowa, Missouri, and Wisconsin, composing practically all of the eastern section of western trunk-line territory, are more favorable than in the territory's western section and in southwestern territory; and that the costs and some of the operating results in such eastern section and in the northwestern region, which embraces all or parts of the railroads owning most of the section's mileage, are better than in the eastern and western statistical districts as a whole and in the separate regions thereof.

In the following table are set forth some of the figures pertaining to freight traffic for 1941 for the States named and for groups comprising sections of western trunk-line territory, southwestern territory, and the State of Illinois:

Freight traffic for 1941

Territory and State	Average miles of railroad operated	Revenue per ton-mile	Per mile of line	
			Revenue ton-miles	Revenue
		Mills		
Official territory:				
Illinois	9,173	6.77	2,625,722	$23,726
Western trunk-line territory:				
Eastern section:				
Minnesota	8,474	9.39	1,710,457	16,053
Iowa	9,383	9.14	1,158,041	10,587
Missouri	7,203	9.59	1,515,97.	14,548
Michigan (Upper Peninsula)	1,536	12.41	642,949	7,980
Wisconsin	6,705	9.73	1,281,275	12,470
Total	33,301	9.51	1,377,089	13,093
Western section:				
North Dakota	5,045	8.67	833,826	7,680
South Dakota	3,994	9.58	364,389	3,492
Nebraska	6,108	8.67	883,820	7,660
Kansas	8,805	9.67	1,136 473	10,993
Colorado	4,527	9.44	994,607	9,391
Total	28,479	9.28	1,006,144	9,341
Southwestern territory:				
Arkansas	4,161	9.71	1,408,233	13,674
Louisiana	4,022	10.21	1,141,988	11,664
Oklahoma	6,619	9.65	853,195	8,230
Texas	13,357	9.82	971,662	9,544
Total	30,150	9.83	1,017,337	10,000

Traffic density figures are affected by the fact that South Dakota, unlike other western States, contains a relatively small amount of the mileage of transcontinental railroads, and by the fact that Iowa has a large proportion of railroad mileage that consists of branch lines over which the traffic moved is relatively light.

Respondents contend that the weight which may be accorded to the Minnesota operating data is diminished greatly by the effect thereon of the heavy tonnage of ore transported for comparatively short distances from the iron ranges of the State to the head of the Lakes.

This principally affects operations in northern Minnesota. Almost 100 percent of the Great Northern Railway's ore tonnage, about 25 million tons in 1941, is handled in Minnesota. Although the enormous ore tonnage, and the relatively small class-rate tonnage, in northern Minnesota is entitled to some consideration along with many other pertinent factors, it cannot be of controlling importance in a class-rate proceeding.

The results set out in the foregoing table indicate that traffic conditions in the eastern section of western trunk-line territory, except upper Michigan, are more favorable than in the territory's western section, and better than in southwestern territory; and that on the whole such western section is somewhat less favored than the Southwest.

Supporting the claim of favorable operating conditions in Minnesota, data for 4 years as to freight and allied services of eight railway systems[1] allocated to the northwestern region are compared with those of the same systems in Minnesota. For 1941, Minnesota's ratios to those of the aggregate of the systems were: Miles of road operated 17.5; operating revenues 21.0; total expenses (operating expenses, taxes, and rents) 19.9; net railway operating income 23.9; revenue ton-miles 20.7; expense per revenue ton-mile 96.1; and average haul 49.9. The average hauls were 255 miles for the entire systems, and 127 miles for Minnesota. Considered from a mileage standpoint freight operating results of these railway systems in Minnesota are better than the average over the entire systems.

A similar claim is made for the section consisting of Minnesota, Iowa, and Wisconsin, composing the greater portion of the eastern part of western trunk-line territory, upper Michigan and Missouri being omitted here. It is supported by freight-traffic returns, combined for the three States, and aggregated for the railroad system referred to in the preceding paragraph, except that the Chicago, Burlington & Quincy Railroad (central-western region railway) is substituted for the Chicago Great Western Railway. The ratios of these States to the whole of the systems for 1941 were: Miles of road operated 37.58; net railway operating income 46.62; carload revenue-tons originated 46.51, and terminated 48.99; revenue ton-miles 41.76; average, per mile of line, of revenue tons originated 123.77, terminated 130.35, and of revenue ton-miles 111.13. The average haul for the systems was 264 miles.

[1] Chicago & North Western Railway, Chicago Great Western Railway, Chicago, Milwaukee, St. Paul & Pacific Railroad, Chicago, St. Paul, Minneapolis & Omaha Railway, Great Northern Railway, Minneapolis & St. Louis Railroad, Minneapolis, St. Paul & Sault Ste. Marie Railway, and Northern Pacific Railway.

Intended to prove that returns on property investment,[2] and operating results of freight and allied services are more favorable in the northwestern region,[3] particularly in Minnesota, than in other regions in the western and eastern districts, data were presented for the years 1939, 1940, and 1941, from which the two following tables have been compiled. Returns on all services do not make as good a showing as for freight alone, for the reason that the passenger-service deficits for the western lines were relatively greater than for the lines in the eastern district.

Rates of return

District, region, or railroads	1939		1940		1941	
	A [1]	B [1]	A [1]	B [1]	A [1]	B [1]
Western district	4.54	2.66	5.15	3.34	7.13	5.32
Northwestern region	4.53	2.69	5.44	3.67	7.36	5.53
Central-western region	4.44	2.65	4.87	3.13	6.60	5.08
Southwestern region	4.85	2.65	5.38	3.29	8.37	5.77
Eastern district	4.69	3.53	5.39	4.06	6.77	5.81
Great Lakes region	4.30	3.19	5.07	3.70	6.86	5.46
Central-eastern region	5.20	3.98	5.91	4.60	6.81	5.65
New England region	3.76	2.70	4.17	2.89	6.21	5.08
Minnesota railroads:						
Trunk lines [3]	7.19	5.19	8.30	6.31	9.62	7.38
Ore roads [4]	12.74	11.64	20.04	18.86	24.33	22.22

[1] Column A, freight and allied services.
Column B, all services.
[3] Chicago & North Western Railway, Chicago Great Western Railway, Chicago, Milwaukee, St. Paul & Pacific Railroad, Chicago, St. Paul, Minneapolis & Omaha Railway, Great Northern Railway, Minneapolis & St. Louis Railroad, Minneapolis, St. Paul & Sault Ste. Marie Railway, and Northern Pacific Railway.
[4] Duluth, Missabe & Iron Range Railway and Duluth, Winnipeg & Pacific Railway.

Freight and allied services, for 1941

District, region, or railroads	Average miles per revenue ton	Averages per revenue ton-mile			
		Revenue	Total operating revenues	Total expenses	Net railway operating income
		Mills	*Mills*	*Mills*	*Mills*
Western district	276	9.46	9.78	7.68	1.78
Northwestern region	215	9.19	9.63	6.77	2.08
Central-western region	306	9.49	9.72	7.19	2.03
Southwestern region	241	9.84	10.18	7.32	2.08
Eastern district	164	9.90	10.25	7.72	2.03
Great Lakes region	173	9.61	9.96	7.53	2.03
Central-eastern region	163	9.62	9.96	7.53	2.03
New England region	130	14.99	15.45	11.08	4.37
Minnesota railroads:					
Trunk lines [1]	127	9.45	9.67	6.48	3.19
Ore roads [2]	78	9.44	10.87	6.57	4.30

[1] Chicago & North Western Railway, Chicago Great Western Railway, Chicago, Milwaukee, St. Paul & Pacific Railroad, Chicago, St. Paul, Minneapolis & Omaha Railway, Great Northern Railway, Minneapolis & St. Louis Railroad, Minneapolis, St. Paul & Sault Ste. Marie Railway, and Northern Pacific Railway.
[2] Duluth, Missabe & Iron Range Railway and Duluth, Winnipeg & Pacific Railway.

[2] The rate base values on which the returns were computed are said to be the original cost less depreciation, plus present value of land and rights, and working capital, as of January 1, 1940. They were derived from certain data prepared by our Bureau of Valuation and introduced as an exhibit in another proceeding.

[3] Five of the railroads in the northwestern region were either in the hands of receivers or in process of being taken out of their hands, at the time of hearing.

Emphasis is placed by these interests on the fact that the average freight-service expense per revenue ton-mile is appreciably lower in the northwestern region, and still lower for the eight Minnesota trunk lines, than in the other regions; and this is so as to the Minnesota lines despite their shorter average haul than those of the respective regions. But the net railway operating income per revenue ton-mile in the southwestern region is the same as in the northwestern region.

The strong influence that iron-ore tonnage has upon the freight-traffic statistics for Minnesota is illustrated by the fact that in 1941 for example, the freight revenue received from Minnesota operations by the two ore roads, referred to in the two tables was $33,000,000, whereas for the eight trunk lines named it was $100,000,000. The latter figure includes the iron ore carried in Minnesota, especially the large volume by the Great Northern Railway, 65.1 percent of whose entire system tonnage consisted of products of mines including ore; that of the Northern Pacific Railway was 24.8 percent. While the figures for Minnesota and the northwestern region contain the contribution from ore, the Pocahontas region (heavy coal-carrying lines) is not grouped with the eastern district in the comparisons described, although the Pocahontas region is part of official territory whose class-rate basis is sought by the western trunk-line interests.

Some of the western trunk-line territory interests argue that carload freight traffic should not be burdened with the deficits in passenger-service and in less-than-carload traffic, but that each category should be required to bear its own share of the costs. A similar question was raised in *Revenues in Western District* (1926), 113 I. C. C. 3, but we said, at pages 22–23:

> We do not subscribe to the proposition that where freight rates are producing, on the property devoted to freight service, the rate of return which has been fixed as fair, we can as a matter of law authorize no increases in such rates to correct deficiencies in aggregate earnings growing out of the inability of the passenger business to meet its full share of the revenue burden. The freight and the passenger services are both essential and both may be subjected to reasonable rates and charges to produce the fair aggregate return authorized by law even though thereby a higher rate of return may be exacted from one than from the other.

Topeka.—This city is now in zone II, but is here seeking the zone I basis of rates. It suggests the accomplishment thereof by expanding westward the present boundary of zone I to a line that would pass

through Topeka and Lincoln, Nebr., and extend to Sioux City, Iowa.[4] As so extended, zone I would embrace all or parts of the northeastern 16 counties of Kansas and a portion of eastern Nebraska. No evidence concerning conditions in the latter was offered.

Topeka asserts that the traffic and transportation conditions have changed materially in its favor since the decision in the original report (1930) in the western trunk-line revision, wherein the present zone boundaries were fixed. Its population in 1940 was 91,247, and the county containing it manufactured products in 1939 valued at $29,000,000, or 6.4 percent of the State's total.

Even though average costs of railroad operations in western trunk-line territory may not be much higher than in official territory, Topeka is of the view that higher class rates are justified in the former because of territorial differences in the consist of traffic, in commodity rates, and in carrier needs. Assuming that the class-rate levels are not made uniform in all territories, the laminated formula is suggested for determining interterritorial rates.

Witnesses for Topeka declare that its competitive situation requires that it be placed in the same rate zone as the lower Missouri River cities, and other points in northern Missouri and southern Iowa, in order to insure its continued existence as an important jobbing, manufacturing, and distributing center. In respect to those activities, probably fifth class (37.5 percent of first class) is the important class on carload shipments that move subject to class rates. Topeka contends that a fair average added sum reflected in Topeka's rates, owing to location in zone II, would be the zone II differential on that class for 65 miles, the distance from Kansas City. On that assumption, the added amount would be 3 cents per 100 pounds.

The request for expansion into northeastern Kansas of whatever rate level and classification may be prescribed for southern Iowa and northern Missouri is predicated on a showing of traffic and economic conditions. Such conditions in these areas are claimed to be practically homogeneous. More particularly, the areas are the 16 counties of northeastern Kansas, including Topeka and Kansas City, Kans., the three southern tiers of counties in Iowa, and the counties in northern Missouri, which are subdivided into those north of the Missouri River and those in zone I. The last-mentioned group includes Kansas City and St. Louis.

[4] Specifically, the suggested line would leave the present boundary of zone I at Windsor, Mo., go thence west on Missouri-Kansas-Texas Railroad to Paola, Kans., thence on Missouri Pacific Railroad to Topeka, thence on Union Pacific Railroad to Lincoln, thence on Chicago & North Western Railway to Fremont, Nebr., thence on Chicago, Burlington & Quincy Railroad to Sioux City, where the line would rejoin the present boundary of zone I.

Illustrative of the general situation concerning the groups of counties described are the following:

Sections	Number of counties	Land area		Population (1940)		
		Square miles	Percentage of State	Total (thousands)	Per square mile	Percentage of State
Northeastern Kansas	16	9,000	11	521	57.9	39
Southern Iowa	31	16,023	29	631	39.7	48
Northern Missouri:						
North of Missouri River	44	25,853	46	780	22.7	31
Zone I	62	35,439	51	2,671	75.4	70

Climatic conditions in northeastern Kansas are much like, and altitudes are similar to, those found in southern Iowa and northern Missouri. The topography of the plains of northeastern Kansas is favorable for construction and operation of railroads, which usually run east and west, in that the rivers flow eastwardly and the railroads extend in their valleys, whereas in southern Iowa and northern Missouri the rivers flow generally in a southwardly direction and must be crossed by the railroads.

Based upon the average figures for 1940, the proportion of land in farms was somewhat greater in northeastern Kansas than in northern (zone I) Missouri, but less than in southern Iowa. Southern Iowa exceeded northeastern Kansas in value per farm of land and buildings and of implements and machinery. As to practically all kinds of livestock, the average per farm in southern Iowa generally was greater than in northeastern Kansas; northern Missouri had more horses and mules, and, in several items, the aggregate for southern Iowa and northern Missouri exceeded northeastern Kansas. The situation as to grains was similar to that for livestock. Northeastern Kansas excelled in the production of potatoes, Irish and sweet.

Relative commercial and manufacturing activities in the sections of the three States are indicated in the following table, according to returns for 1935:

(In millions of dollars)

Sections	Retailing sales	Wholesaling sales	Value of manufactures
Northeastern Kansas	113.88	60.21	226.72
Southern Iowa	135.80	57.17	31.68
Northern Missouri:			
North of Missouri River	148.39	135.18	134.56
Zone I	760.70	1,704.11	1,078.87
Southern Iowa and Missouri zone I combined	896.50	1,761.28	1,110.50

In order to prove that the traffic density of northeastern Kansas is heavier than in northern Missouri, the State of Iowa and in other States, the revenue ton-miles per mile of line of the divisions of the

4 railroads[1] operating through Topeka are compared in various ways. Those divisions do not include all of the railroad mileage in the 16 counties of northeastern Kansas. They do include substantial mileage in Kansas outside such counties. Among the comparisons are those for 1925 to 1940, both inclusive, showing that the density on the 4 divisions described averaged 57 percent of the eastern district, whereas northern Missouri and the State of Iowa averaged 52 and 36 percent. The claim that the density is greater in northeastern Kansas than in the whole State of Kansas is based on results for 1926 to 1938, inclusive. For that period, the density on the divisions of the railroads that pass through Topeka was 1,452,818 ton-miles per mile of line compared with 957,441 ton-miles per mile of line of the 4 railroads for all Kansas, and 945,868 ton-miles for all railroads in the State of Kansas. In the first 4 items of the following table are stated the densities adduced by Topeka for 1940, to which have been added the densities on the class I western railroads for certain other States:

Freight traffic densities for 1940

[Revenue ton-miles per mile of line]

Divisions on which Topeka is located	1,370,778
Northern Missouri	1,215,147
State of Iowa	917,472
Eastern district	2,624,236
State of Missouri	1,164,927
State of Nebraska	1,024,209
State of Minnesota	1,343,073
State of Wisconsin	1,028,402
State of Illinois	2,095,143

Wichita.—It is contended on behalf of this city that the Edwards cost studies and the testimony in regard thereto definitely show that a uniform class-rate structure is justified throughout all the territories embraced in this proceeding; and that there must be separate scales of class rates for less-than-carload and carload traffic, because costs on the former are relatively much higher than on the latter. This and other evidence are cited in substantiation of the allegations that the class rates throughout western trunk-line and southwestern territories are unreasonable and unduly prejudicial, and preferential of official territory. In particular, such allegations are made respecting Wichita's zone III location.

If territorial rate uniformity is not required, witnesses for Wichita expressed the view that there are compelling reasons for including Wichita in zone I. A new western line first suggested for zone I would

[1] These roads are the Atchison, Topeka & Santa Fe Railway, Chicago, Rock Island & Pacific Railway, Missouri Pacific Railroad, and Union Pacific Railroad. Topeka is on the main lines of these roads, except that it is at the end of a branch line of the Missouri Pacific.

extend in Kansas from the eastern State line immediately west of Joplin, Mo., around to the northern State line at Superior, Nebr.,[*] the effect of which would be to blanket under zone I all of the Kansas portion at present in zone II, and enough more to contain Wichita; but no continuation of the new line was specified beyond the borders of Kansas in order to round out an enlarged zone I. Later, on oral argument, an alternative partial line was offered, namely, a line branching off the present zone I boundary at St. Joseph, and extending over certain railroads through Topeka to Wichita, counsel saying he would leave the line there for us to complete.

Almost all manufactured goods, characterized as railroad revenue-yielding tonnage, produced in Kansas are made in the counties east of a line drawn north and south to include Hutchinson and Wichita. Eastern Kansas, so defined, represents 45.5 percent of the State's land area, but the value of its manufactures was 97.1 percent of the State's total of $468,000,000 in 1939.

Wichita is 200 miles southwest of Kansas City and had a population in 1940 of 143,311. The county containing it produced manufactures in 1939 valued at $57,000,000, or 12.3 percent of the State's total. Wichita relies chiefly upon the business activities of its particular area, comprising four counties of central-eastern Kansas, namely, Butler, Harvey, Marion, and Sedgwick (containing Wichita) to justify the requested change in zone boundary. The counties are west of zone II.

The record contains many comparisons between economic conditions in the western trunk-line zones, in central territory, and in the four counties named which are now in zone III. Most of the territory in those counties would be brought into zone I if that zone were extended to the line first described above. Some of the comparisons are shown on the following table.

Item	Wichita's 4 counties	Western trunk-line territory			Central territory[2]
		Zone I	Zone II	Zone III[1]	
Area in square miles	3,943	168,985	178,950	215,950	161,440
Miles of class I railroads	611	23,100	17,591	9,886	32,140
Population (1940):					
Total (thousand)	215	7,264	5,015	2,008	24,670
Per square mile	54.8	43.0	28.0	9.3	149.1
Per mile of railroad	353.5	314.0	284.0	203.0	749.0
Value of manufactures (1939):					
Total (million)	$57	$2,146	$1,178	$218	$16,242
Per 1,000 of population (thousand)	$443	$295	$230	$122	$974
Per mile of railroad (thousand)	$153	$92	$64	$24	$506

[1] Omits the parts of Colorado and Wyoming in zone III.

[2] Ohio, Indiana, Illinois, lower Michigan, and southeastern counties of Wisconsin.

[*] The western boundary in Kansas suggested for zone I would extend from Joplin on the Missouri-Kansas-Texas Railroad to Columbus, thence on St. Louis-San Francisco Railway through Oswego and Severy to Wichita, thence south on Atchison, Topeka & Santa Fe Railway through Norton to Peabody, thence north on Chicago, Rock Island & Pacific Railway to Lost Springs, thence on Atchison, Topeka & Santa Fe Railway through Detroit, Abilene, Manchester, and Concordia to Superior.

Average figures for the 4 counties as a whole are not far behind those for the 16 northeastern counties of Kansas, previously referred to, in respect of population per square miles, 54.8 as compared with 57.6, or the value of manufactures per 1,000 population, $433,000 as compared with $460,000. Expansion of zone I to include Wichita's 4 counties would draw into that zone 23 additional Kansas counties, other than the northeastern counties now in zone II, of which little mention is made.[6] In the aggregate, these 27 counties have a population per square mile of 32.3, and a value of manufactures per 1,000 population of $195,000. Both of these figures are much below the averages for zone I as well as for northeastern Kansas, but as compared with the entire western trunk-line zone II they are somewhat higher as to the population figure and lower as to manufactures.

Manifestly, the question of broadening a rate zone to encompass an additional area brings under review the entire area and not a portion only. Although northeastern Kansas compares favorably with present zone I, the same conclusion cannot be reached as to the 27 counties described, or as to the aggregate of such counties and the 16 northeastern Kansas counties. Wichita lies 154 rail miles southwest of Topeka and 51 rail miles north of the Kansas-Oklahoma border, and, with its surroundings, constitutes, in effect, an industrial island in the great expanse of agricultural and plains country, whereas northeastern Kansas adjoins zone I.

Another issue raised by Wichita is whether the continued maintenance of finding 27 in the original report in the southwestern revision as to class rates is necessary and justified. Finding 27 required the removal of the undue prejudice and preference set forth in findings 1 to 11 in the report in that proceeding. So far as concerns undue prejudice and preference between Kansas and Oklahoma, finding 27 is now confined to the comparatively narrow strip of Kansas on and south of a line through Wichita.[7] Wichita claims that finding 27 acts as a bar to its participation in essential competitive rate adjustments peculiar to the needs of western trunk-line territory within which it is located.[8] In view of the *ad interim* findings hereinafter

[6] These 23 Kansas counties cover a land area of 15,619 square miles. They had a population, in 1940, of 418,217 or only 26.6 per square mile, and in 1939 produced manufactures of 20 million dollars or only 72.4 thousand dollars per 1,000 population.

[7] The line is entirely in Kansas and extends from the Kansas-Missouri border westwardly on the Missouri Pacific Railroad through Fort Scott, Iola, Eureka, and Eldorado to Wichita, thence on the Atchison, Topeka & Santa Fe Railway to Pratt, thence southwestwardly on the Chicago, Rock Island & Pacific Railway to the Kansas-Oklahoma border.

[8] In the twenty-eighth supplemental report (1942) in the southwestern revision, 253 I. C. C. 599, the question of the modification of the findings of undue prejudice and preference was considered. No modification was made with respect to class rates as such, but the provisions of the outstanding order regarding prejudice and preference in that revision, in so far as they apply to rates on commodities on which no specific column or percentage of the first class rates had been prescribed for general application to, from, and between points in the Southwest, were suspended for the duration of the war and 6 months thereafter, or until the further order of the Commission.

made, modification of finding 27 of the southwestern revision is unnecessary at this time.

SOUTHWESTERN TERRITORY SHIPPER INTERESTS

Interests in the southwestern States of Arkansas, Louisiana (west of the Mississippi River), Oklahoma, and Texas and in Kansas, hereinafter referred to as the Southwest or southwestern States, advocating changes in the class rates are represented by a committee appointed for the purposes of introducing pertinent testimony, conducting cross-examination, and presenting briefs and oral arguments. Their authority was derived from action of the governors, and of the regulatory commissions having jurisdiction of the railroad rates, in the above-named States. The Legislature of Texas specifically directed its attorney general to proceed in the matters concerned.

The evidence presented by the committee is, in character and substance, substantially similar to that introduced on behalf of the Southern Governors' Conference, and, as in the case of the conference, much reliance is placed on the testimony of the witness for the Tennessee Valley Authority, which dealt principally with economic questions heretofore discussed.

As previously stated, the remedy sought by these interests is uniformity of class rates, mile for mile, within the Southwest and between that area and all other rate territories covered by our order of investigation. The specific rate level sought is the eastern scale, extended for distances beyond 1,500 miles at the rate of progression for each additional 100 miles as now used in that scale between 1,400 and 1,500 miles.

Southwestern interests, unlike those in the South, interpose no objection to revision of exception and commodity rates within, to, and from the Southwest on a uniform basis with that in the East, whereas the Southern Governors' Conference insists most emphatically that such rates are not in issue and should not be disturbed in this proceeding. The Southwest agrees that if there is to be uniformity of the rates within and between the various territories, it should be complete and should extend to all kinds or types of rates, except that in a few appropriate situations uniformity may be departed from to meet peculiar and unusual conditions. In their exceptions to the examiners' report in docket No. 28310, they expressed the view that, if the classes they there proposed are established, little or no necessity will remain for the maintenance of commodity rates on particular articles.

Strong representations are made that the economic development of the Southwest has been retarded by the present class-rate structure, and that this alleged condition is one of the principal factors to be taken into consideration in the prescription of reasonable and nondiscriminatory rates.

Committee evidence.—The rate evidence dealing with class rates was presented by a member of the committee. It consists of a comparison of the distance scales of first-class rates prescribed in the several territories, including averages, totals, progressions of scales, and percentage relations of scales; a comparison of specific first-class rates between representative points in official territory and southwestern points with rates for equal distances in official territory; the bridge-scale arbitraries applicable on traffic to and from stations in Arkansas and Louisiana within 170 miles of the Mississippi River, Memphis, and south, in determining maximum rates from and to official and southern territories; traffic to which the bridge-scale arbitraries are applied, moving at rates in certain tariffs from and to southern territory to and from points in Arkansas and Louisiana within 140 miles of the Mississippi River crossings, Memphis, and south; a comparison of the first four classes, intrastate and interstate, in Kansas (which also apply between Arkansas and contiguous points in adjoining States) with prescribed southwestern zone III and official territory scales; the percentage relations of the first-class rates in the tariff naming the preceding rates to those in the southwestern zone III scale; a comparison of the first four classes, intrastate and interstate, in Oklahoma and between Oklahoma points and localities in contiguous States with the southwestern scale; and percentages of first class prescribed by us for application on specified commodities in southwestern and official territories.

The comparisons are similar in many respects to those in appendix 9. They show that the class rates in the Southwest and between the Southwest and other territories are materially higher than those in official territory.

We have referred to the fact that a comparison of first-class rates within or between territories does not, in most instances, reflect the differences between the rates on which the traffic moves. That observation is particularly suitable to the Southwest. The extent to which exceptions have been published within, and to and from, that area is not specifically shown of record, but there is general testimony to the effect that the class rates in issue move only a small proportion of the total traffic. This is supported by the study made by a member of our staff showing the proportions of traffic transported on 1 day in 1942 on class rates, exception rates, and commodity rates. Those propor-

tions have been shown, but as to southwestern traffic they are repeated here for convenience:

Territories	Class rates	Exception rates	Commodity rates
	Percent	*Percent*	*Percent*
Southwestern	2.4	4.4	93.2
Official to southwestern	22.5	52.0	25.5
Southwestern to official	1.5	3.4	95.1
Southern to southwestern	6.1	22.1	71.8
Southwestern to southern	1.2	4.3	94.5
Western trunk-line to southwestern	13.6	6.2	80.8
Southwestern to western trunk-line	2.0	3.0	95.0

It will be noted that, on the day mentioned, 95.1 percent of the total traffic transported from southwestern to official territory moved at commodity rates, and that only 1.5 percent moved at class rates, whereas of the total from official to southwestern territory 22.5 percent was transported at class rates, and 25.5 percent at commodity rates. Although the proportions of traffic moved at class, exception, or commodity rates between southwestern territory and other territories vary, a great preponderance of the traffic, except from official territory, moved at commodity rates. The levels of the commodity rates are much below the class-rate levels.

The foregoing description of the rate evidence introduced includes the rate evidence introduced by the committee. Additional rate evidence was introduced by members of the committee, by a witness representing the Fort Worth Freight Bureau, Fort Worth Chamber of Commerce, Texas Cottonseed Crushers' Association, Southwestern Peanut Shellers' Association, West Texas Chamber of Commerce, Freight Rate Equality Federation[9] and by witnesses for Railroad Commission of Texas, Arkansas Rice Traffic Bureau, and El Paso Freight Bureau. Their rate evidence did not deal with the class rates in issue, but with rates on specific commodities which had been established either as exception or commodity rates.

In some instances, commodity rates within the Southwest or from or to the Southwest are lower than the rates on like traffic for equal distances within official territory. The following comparisons are illustrative of this situation:

Sand, gravel, crushed stone, and related articles.—In *Sand, Gravel, Crushed Stone, and Shells*, 155 I. C. C. 247, we prescribed, for application on interstate carload shipments between points in the Southwest, a single-line scale and a joint-line scale for distances up to and including 800 miles. This southwestern single-line scale averaged 99.5

[9] This federation represents 132 counties in West Texas containing 185 affiliated towns and cities.

percent of the so-called west Penn. single-line scale prescribed in *Pennsylvania Sand & Gravel Producers Assn.* v. *B. & O. R. Co.*, 104 I. C. C. 717, for application from points in western Pennsylvania to destinations in Ohio, West Virginia, and New York; and the prescribed southwestern joint-line scale averaged 94.4 percent of the west Penn. joint-line scale. The prescribed southwestern single-line scale averaged 95.3 percent of the so-called Ohio single-line scale prescribed in *Rates on Crushed Stone, Gravel, Sand, and Slag in Ohio*, 191 I. C. C. 206, for application to destinations in Ohio from certain points in Pennsylvania and from Weirton, W. Va.; but the prescribed southwestern joint-line scale averaged 106.2 percent of the Ohio joint-line scale. However, truck-competitive rates which are much lower than the prescribed scales apply on sand, gravel, crushed stone, and related commodities, from and to many points in the Southwest. The southwestern truck-competitive single-line scale averages only 72 percent of the Ohio single-line scale and 89.1 percent of the west Penn. single-line scale; and the southwestern truck-competitive joint-line scale averages 81.3 percent of the Ohio joint-line scale and 72.5 percent of the west Penn. joint-line scale.

Brick.—The interstate carload rates on brick, and related articles carried in the uniform brick list, between points in the Southwest are based on the single-line and joint-like scales which we prescribed for distances up to and including 1,000 miles in *Southwestern Brick Cases*, 107 I. C. C. 681, decided February 16, 1926, as modified by the subsequent general rate changes. The average rate under the southwestern single-line scale is 83.7 percent of the average rate under the eastern trunk-line single-line scale, and the average rate under the southwestern joint-line scale is 86.8 percent of the average rate under the eastern trunk-line joint-line scale. But the southwestern scales are higher than the central-territory scales, the single-line scale in the Southwest averaging 102.1 percent of the corresponding central territory scale and the southwestern joint-line scale averaging 105.8 percent of the central territory scale for joint-line hauls.

Butter, eggs, and dressed poultry.—In some instances, specific rates within, from, or to the Southwest are lower than the rates for like distances in official territory, but in other instances the reverse is true. For example, the rate from Little Rock, Ark., to Memphis, Tenn., 134 miles, is 29 cents per 100 pounds, while the rate from Wooster, Ohio, to Pittsburgh, Pa., 134 miles, is 34 cents; the rate from Enid, Okla., to St. Louis, Mo., 546 miles, is 54 cents while the rates to New York, N. Y., from Leesburg, Pa., 507 miles, and Linesville, Pa., 546 miles, are 57 and 59 cents, respectively; and the rates to Kansas City, Mo., from Vinita, Okla., 189 miles, and from Clinton, Okla., 404

miles, are 31 and 45 cents, respectively, as compared with rates to Chicago, Ill., of 37 cents from Muncie, Ind., 187 miles, and 48 cents from Bremen, Ohio, 404 miles. But a rate of 54 cents is maintained from Tulsa, Okla., to St. Louis, 425 miles, whereas the rate from Oil City, Pa., to Cincinnati, Ohio, 430 miles, is only 50 cents; a rate of 62 cents applies from Clinton, Okla., to St. Louis, 641 miles, while a rate of only 46 cents is maintained from Mansfield, Ohio, to Chicago, 642 miles; and a rate of 67 cents is in effect from Dallas, Tex., to St. Louis, 797 miles, while a rate of 65 cents applies from Toledo, Ohio, to New York, 701 miles.

Compressed cotton.—The rates from representative origins in the Southwest to representative destinations in official and southwestern territories are generally lower than the rates for like distances in official territory. For example, the rate from Blytheville, Ark., to Chicago, 514 miles, is 47 cents per 100 pounds, minimum 50,000 pounds, while the rate for the same distance in official territory is 60 cents; the rate from Little Rock, Ark., to Houston, Tex., 435 miles, is 40 cents, minimum 65,000 pounds, while the rate for that distance in official territory is 55 cents; and the rate from Oklahoma City, Okla., to Houston, 465 miles, is 40 cents, minimum 65,000 pounds, as compared with a rate of 57 cents for the latter distance in official territory.

Refined petroleum.—Rates from Tulsa to points in western trunk-line territory are lower than rates for like distances from Whiting, Ind., to destinations in official territory. For example, rates on refined petroleum (gasoline), *in packages*, in carloads, from Tulsa are: Twenty-eight cents per 100 pounds to Kansas City, Mo., 244 miles, as compared with a rate of 29 cents from Whiting to Marion, Ohio, 242.6 miles; 36 cents to Omaha, Nebr., 424.8 miles, while a rate of 39 cents is maintained from Whiting to Richardson, Ky., 429.2 miles; 36 cents to Des Moines, Iowa, 452.3 miles, while a rate of 39 cents is in effect from Whiting to Spencer, W. Va., 457.6 miles; and a rate of 46 cents to Minneapolis, Minn., 718.2 miles, as compared with a rate of 48 cents from Whiting to New Berlin, N. Y., 711.2 miles. On refined petroleum (gasoline), *in tank carloads*, the rates from Tulsa range from 4 to 9 cents per 100 pounds less than the rates on the same commodity in packages. The rates from Whiting apply on refined petroleum in any kind of equipment.

Lumber.—Generally, the rates on lumber (hardwood, yellow pine, and cypress) from the Southwest to official territory are somewhat higher than rates for equal distances on like traffic within official territory. In a few instances, however, the interterritorial rates on lumber from the Southwest to official territory are lower than the lumber rates on the basis that applies generally in official territory. For example, from Crossett, Ark., and Tenaha, Tex., to Boston, Mass., and Portland,

Maine, a rate of only 58 cents per 100 pounds is maintained for distances that range from 1,579 to 1,827 miles as compared with rates ranging from 56 to 62 cents for equal distances on the official territory basis of 22.5 percent of the eastern first-class rates.

In addition to the rate evidence, testimony was given by the Governor of Arkansas and several witnesses representing the State of Texas, Louisiana Public Service Commission, Kansas State Geological Survey, Arkansas State Planning Board, and Arkansas Agricultural and Industrial Commission. They described the extensive and varied resources of their respective States, testified to the nonutilization of many of such resources for final manufacture in their respective States, and enumerated what they consider are the economic effects of the absence or deficiency of manufacturing establishments in their States upon the fullest utilization of their natural resources.

The gist of their testimony is that the class rates within the Southwest, and between that area and other portions of the country embraced in this proceeding, have prevented the establishment of manufacturing plants in the former area. Evidence introduced to prove this contention was as follows:

Some time prior to the hearing at which these witnesses testified, a synthetic rubber plant was established at Baton Rouge, La. The only rate available from the plant to official territory on synthetic rubber was on the basis of 50 percent of the class 100 rate in the southern scale, as compared with a rate of 36 percent of the class 100 rate applicable within official territory. Six months elapsed before the latter level of rates was published from the Baton Rouge plant.

The Arkansas State Planning Board is a member of several committees of the South-Central Region of the National Resources Planning Board, which comprises the four southwestern States. A joint board of the above organization found, in a report made in 1942, that the region described, as compared with the United States, has nearly 10 percent of the national population but only 5 percent of the industrial establishments and 3 percent of all the wage earners in manufacturing establishments, and that it paid less than 3 percent of the total wages, and produced only 4 percent by value of all manufactured products.

No industries of any particular moment have been established at El Paso during the past 10 years. Industries in that community have operated in large part under a system of rates that did not contain any differentials for distances in differential territory and which were for the most part not class rates.

The Arkansas Agricultural and Industrial Commission, whose duties include the development and promotion of agriculture and industry in the State, has not had much success in securing the location of manufacturing industries in the State. Its executive director at-

tributed the lack of success to the alleged handicap of unequal freight rates. Contacts made with many large manufacturing concerns had failed to persuade them to locate in the State. None of the industries named offered evidence. Complaint had been made to the witness, the details of which were not disclosed, that canneries within the States are unable to reach the populous centers of the United States because of freight rates. The location of industries in Arkansas which would use raw materials such as agricultural products, products of the forests or of the mines, would not, in his opinion, adversely affect the best interests of other sections of the nation.

A professor of transportation and industry of the University of Texas was engaged by the committee to compare the actual freight charges paid on in-bound and out-bound shipments made in 1 year by five manufacturing companies in Texas with charges computed at rates in effect in official territory for the same distances. His study shows that the charges paid on such shipments were $83,054.62 more than the sum produced by the latter basis. The witness stated that this difference represents the "economic burden" of these manufacturers, and is typical for Texas industries. It also represents what respondents' loss would be on the business of these five shippers, and affords an indication of the losses respondents would sustain if the action sought by advocates of uniformity was required.

One of these concerns, a chili canning company, turned over its capital almst three and one-half times in 1941, made a gross or operating profit of 35.6 percent, and shipped its products in carload and less-than-carload lots to 32 States other than Texas. A cotton-mill company had a capital stock turnover four times in 1941. Its gross profit was 11.5 percent, and the total freight paid, both in-bound and out-bound was less than 5 percent of net sales. In 1941, 54.1 percent of its in-bound raw materials traffic came from official territory, and 34.1 percent of the finished products was shipped to that territory.

A manufacturer of toilet preparations, perfumes, et cetera, had a gross profit in 1941 of approximately $300,000, or about 47.5 percent, representing a capital stock turnover 16 times. The added value produced by manufacture was $300,000 at a labor cost of $8,728. In that year, it distributed its products to 33 States.

Another of the companies is a manufacturer of a bread-making compound whose total sales in 1941 amounted to only $26,000. Its products were shipped to about 70 points in Texas, also to destinations in Oklahoma, Louisiana, Arkansas, Georgia, Florida, Alabama, Mississippi, Michigan, Pennsylvania, Colorado, Iowa, Kansas, New Mexico, Montana, and California. Its administrative salaries were $6,500, or 25 percent of net sales, and wages paid amounted to $2,660, or about 10 percent of net sales.

The fifth concern produces lime. The average freight charges per ton paid in 1939 were slightly less than $3.50. A check of the freight charges computed on the official territory level indicates that the rates used to show the difference between the freight charges on that level and those assessed are not correct.

The witness did not specify what part, if any, of the freight charges assessed on the shipments of the five manufacturers studied were at the class rates here in issue; nor the kind (class, exception or commodity) of rates published in official territory that were used in the comparisons. Undoubtedly many of the in-bound raw materials, and some of the out-bound finished products such as canned goods and lime, did not move at class rates; and it is unlikely that all the official territory rates were class rates that could be directly affected by the decision in this proceeding. Apparently, the traffic of only these five companies was surveyed, with no attempt to produce a representative cross-section of Texas industries, some of whose freight charges may be lower than those in official territory.

MOUNTAIN-PACIFIC TERRITORY

Rates within, and to and from, mountain-Pacific territory are not in issue in this proceeding, and no evidence was introduced with respect to those rates by any shipper or carrier interests in that territory. However, a representative of the Railroad Commission of the State of California, Arizona Corporation Commission, and Public Service Commission of the State of Nevada appeared at the oral argument. He contended that uniformity is unnecessary and impracticable, and that this is not the time to bring about a general adjustment of the rate structure for the following reasons: The volume and composition of traffic have undergone drastic changes during recent years; many classes of commercial traffic have virtually disappeared; many changes in conditions will occur in various sections of the country upon the termination of the war; there are no available means of determining at this time the character of the rate structure which will be necessary for the future; and the evidence of record is already old.

The establishment of the uniform classification herein found reasonable for the entire country will necessarily make changes in the measure of the class rates on certain articles within, and to and from, mountain-Pacific territory. Whether an investigation concerning class rates within, and to and from, that territory will be necessary in order to apply the uniform classification, and in order to harmonize such class rates with the class rates herein prescribed, will be later determined.

648612—45—No. 148——15

WESTERN RESPONDENTS

Defense of the class rates in the Southwest and western trunk-line territory was assumed by a committee of representatives of class I railroads operating in those territories.

As stated, we prescribed the class rates within the Southwest and western trunk-line territory, and between those and other territories, in a series of investigations extending over many years, the latest of which was concluded in 1939. In the view of these respondents, such rates, having been prescribed by us, are presumptively lawful, and the burden of proof of their unlawfulness is upon those interests which would overturn them. They assert that the principal changes in conditions since 1939, when the western-southern revision was decided, are those brought about by the European war and this country's entrance into World War II, and that these are not changed conditions as we would usually consider the term in examining the lawfulness of a freight rate adjustment.

On the matter of uniformity, western respondents' position is that freight service cannot be sold at a uniform rate throughout the country, and that differences inherent in the economic and transportation needs of the respective rate territories must reflect themselves in freight-rate structures in order to promote the best interests of those territories and to preserve the transportation system. These respondents contend that uniformity in class-rates, or in any other type of freight rates, is incompatible with such sharply contrasting differences; and that a more plausible foundation for uniformity would have been laid if proponents could have established that substantial uniformity exists between the territories in the volume and nature of traffic, occupations, products, and other material factors, rather than that pronounced differences prevail. They challenge the accuracy and conclusiveness of the cost studies of record and their usefulness as media to judge the lawfulness of, or to prescribe freight rates on, classes or commodities. In addition, they argue that contentions based on social and economic grounds interposed on this record are not relevant to the issues. Neither we nor any other existing body has, in their opinion, the power to exercise the role of an economic arbiter over the affairs and lives of the nation's people. They declare that the demand for a readjustment of rates at respondents' expense constitutes an effort to persuade us to require railroads to grant a subsidy in order to finance an adventure in experimental sociology, and that such is not our function, citing *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.*, (1935), 213 I. C. C. 297, and *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42.

Respondents do not question the sincerity of the State governors in contending that the class-rate adjustment impedes, handicaps, and obstructs industrial progress and even excludes industry from the Southeast and Southwest, but they point out that, except for a single reference to a creamery by the Governor of Arkansas and generalizations by two employees of the Arkansas State government, there is no proof that freight rates have had any such effects; and that even the four industrial concerns mentioned by one of the above witnesses would have no use for class rates in the movement of their products. None of the large industries, whose failure to locate establishments in Arkansas was attributed by these witnesses to the level of the class rates, appeared at the hearing to confirm their testimony.

Only three commercial witnesses, speaking for individual establishments in the Southwest and western trunk-line territory, testified in this proceeding. These were a steel company at Denver, a manufacturer of coal-washing machinery at Pittsburg, Kans., and a lamp and stove company at Wichita. The representatives of the two manufacturers last named testified that a great preponderance of their products was shipped to official territory, but neither complained that the rate adjustment had discouraged or barred their enterprises from locating where they are. The steel company at Denver uses class rates only to a very limited degree.

There has been greater industrial progress in the Southwest than in western trunk-line territory. In 1929, the two groups of States, combined, received 19.88 percent of the national income of the United States as a whole, excluding mountain-Pacific territory, and in 1941, 19.72 percent. In 1929, the four southwestern States received 5,055 million dollars, or 6.81 percent, of such income; in 1941, their percentage was 7.24, amounting to 5,848 million dollars, an increase of about 800 million dollars. This showing is more favorable than that for the nine western trunk-line States, whose percentage of the same total income dropped from 13.07 in 1929 to 12.48 in 1941. However, the total income of these States increased 400 million dollars.

With respect to the nonfarm portion of the national income, the four southwestern States received 5.82 percent of the United States total, excluding mountain-Pacific territory, in 1929 and 6.21 percent in 1941. The percentages of the total for the western trunk-line States dropped from 9.94 in 1929 to 9.16 in 1941.

The following table shows the number of wage earners in the southwestern, western trunk-line, and official territory States for various years, and the percentage of each group to the total number of wage

earners in the country, as a whole, exclusive of mountain-Pacific territory:

Period	Western trunk-line States		Southwestern States		Official territory States	
	Wage earners	Percent of total [1]	Wage earners	Percent of total [1]	Wage earners	Percent of total [1]
Year 1921	602,752	9.17	229,508	3.49	4,969,884	75.60
Year 1929	771,750	9.30	297,743	3.59	6,102,688	73.54
Year 1933	502,888	8.80	192,585	3.37	4,110,195	71.90
Year 1939	606,817	8.19	262,583	3.54	5,367,779	72.42

[1] Excluding the States in mountain-Pacific territory.

The number of manufacturing establishments decreased in official territory, excluding Virginia and West Virginia 13.14 percent in 1939 as compared with 1921; and the number of such establishments decreased 12.08 percent in western trunk-line territory in the same period, as compared with an increase of 23.65 percent for the four southwestern States. In connection with this showing, it should be borne in mind that the average value of manufactures per establishment is larger in official than in southwestern and western trunk-line territories. In 1939 such average values were as follows: Official, $346,000; southwestern, $256,000; and western trunk-line, $246,000.

The Bluebook of Southern Progress, 1941, a publication devoted to the development and expansion of industry in the southern and southwestern States, lists 45 new industrial plants, and extensions, in 1940 in Arkansas, Louisiana, Oklahoma, and Texas, 32 of these being in Texas.

Analysis of movements of all carload freight on 2 days in 1942, hereinbefore referred to, shows that of the 22,341 carloads of all freight originating in the Southwest on the 2 days, 10,985 carloads, or 49.17 percent, terminated within the territory and 5,833 carloads, or 26.109 percent, were destined to stations in official territory. In the manufactures and miscellaneous group there were 8,954 carloads, representing 40.079 percent of all carloads originating in the Southwest. Of this number, 35.47 percent, or 3,176 carloads, terminated within the Southwest, and 3,477 carloads, or 38.832 percent, were destined to official territory. The latter figure reflects heavy movements of petroleum products from the Southwest. On the 2 days, official territory originated 1,366 carloads of manufactures and miscellaneous for shipment to the Southwest.

On the 2 days studied, 45,109 carloads originated in western trunk-line territory. Of this number, 32,989 carloads, or 73.132 percent of the total, were terminated in that territory; 8,246 carloads, or 18.28 percent, were destined to official territory; 1,167 carloads, or 2.587 per-

cent, to southern territory; 1,527 carloads, or 3.385 percent, to the Southwest; and 820 carloads, or 2.616 percent, to mountain-Pacific territory, Canada, and Mexico. In the manufactures and miscellaneous group, western trunk-line territory originated 2,667 carloads destined to official territory, and the latter originated 3,192 carloads destined to western trunk-line territory.

The western respondents, like respondents in other territories, take the position that although commodity rates and classification exceptions are not in issue, they are indisputably involved, and that the argument for an equality of class rates, if sound, is a valid argument for equality of all other rates, and that, therefore, we are confronted with a question far broader than the limitations of this proceeding.

The western district, which includes both western trunk-line and southwestern territories, as well as mountain-Pacific territory, is distinguished from official territory by dissimilarities in the composition of traffic, in the volume of business, and by other factors. As most railroad statistics are compiled by districts or regions into which the country has been divided for statistical purposes instead of by rate territories, the data are available only for these districts or regions.

In 1941 the western-district class I railroads operated an average of 129,906 miles of road in freight service. This was 56.45 percent of the 230,094 miles operated in the entire country. The western roads originated 36.98 percent of the total tons of carload traffic originated in the United States, excluding the Pocahontas region. The eastern district roads operated 56,377 miles, or 24.50 percent of the total mileage, but they originated 47.40 percent of the total carload traffic originated, excluding the Pocahontas region.

When the composition of traffic originated in the two districts is analyzed, the contrast becomes greater. In comparing traffic data, the figures used are based on those for the year 1941 from which, however, the figures for the Pocahontas region are excluded because the railroads of that region originate an extraordinarily large tonnage of coal. In that year the western district originated 68.82 percent of the total agricultural products originated in the country, as compared with 20.88 percent originated by carriers in the eastern district. This volume of products of agriculture originated in the West was but 6.33 percent of the total of all carload traffic originated in the country.

In the same year the western roads originated 28.06 percent of manufactures and miscellaneous tonnage as compared with 60.66 percent originated by the eastern carriers. A striking contrast in the character of traffic is shown by the fact that the western district railroads originated 68.82 percent of the total tonnage of products of agriculture while the eastern railroads originated 60.66 percent

of the total tonnage of manufactures and miscellaneous. While the difference in these figures is only 8 percentage points, the eastern roads' tonnage of manufactures and miscellaneous is almost three times the tonnage of products of agriculture originated by the western district railroads. The eastern roads' preponderance of high-grade traffic affords a greater source of revenue to them than do the products of agriculture to the western carriers.

In 1941 the western roads originated 63.03 percent of the total tons of animals and products originated in the country, excluding the Pocahontas region, as compared with 28.51 percent originated by eastern roads. While the western roads' percentage is high, the tonnage which it represents was less than 1 percent of the total tons of carload traffic originated in the United States. We have stated (*Livestock—Western District Rates*, 176 I. C. C. 1, 83) that livestock is a commodity which from its nature cannot be expected to do more than pay its own way. In other words, it cannot sustain a rate level which will produce more than the cost of rendering the service plus a minimum of profit.

The western district roads in 1941 originated 58.73 percent of the total tons of products of forests originated in the country as compared with 7.52 percent originated by the eastern roads. The western tonnage is 3.80 percent of such total. This group of commodities is subject to freight rates which are outside of the higher brackets.

In 1941 the western roads originated 33.31 percent of the total tons of products of mines as compared with 49.85 percent originated by the eastern roads. The origination in the West was 17.47 percent of the total originated in the country as compared with 26.14 percent for the eastern district. The figures for the West include iron ore, which is mined almost solely in Minnesota and is hauled for relatively short distances to Lake Superior docks.

Because averages may not always give a true picture of the situation, the western respondents show the tonnages of traffic originated in the individual States of Minnesota, Kansas, Iowa, North Dakota, South Dakota, Nebraska, Oklahoma, and Colorado. These data establish the fact that the several groups of commodities do not originate in equal quantities per mile of line or per railroad system. In 1941, Minnesota led all the western States, included in this investiagtion, in the volume of products of agriculture originated, but, because of the large tonnage of iron ore, Minnesota's vast agricultural output represented only 9.75 percent of the total tonnage originated in the State. In Kansas, a close second, 46.62 percent of the State's total tonnage consisted of agricultural products. Iowa's percentage in that group was 36.34 percent, North Dakota's 67.40 percent, South Dakota's 58.57 percent, and Nebraska's 48.01 percent. Oklahoma's percentage of the State's total, in

the same group, was 19.87 percent and Colorado's 23.70 percent. Differences of the same nature are shown with respect to the tons originated in the animals and products group.

The 13 States,[19] comprising roughly western trunk-line and southwestern territories, originated a total of 258,735,397 tons of all carload freight, as contrasted with 199,140,599 tons of manufactures and miscellaneous alone which were originated in the eastern district.

In 1940 the ratio to total population, of the rural population in the three western trunk-line zones, excluding the affected parts of Wyoming and Colorado, was 57.4, and of the urban population, 42.6; in the four southwestern States the ratios were 60.2 and 39.8, respectively. Predominance of urban residents existed in none of the southwestern States and only slightly in two of the western trunk-line States, whereas it existed in all but four of the official-territory States.

There is a wide difference between the traffic densities of the eastern and western districts. During the period from 1921 to 1941 the revenue ton-miles per mile of line of eastern-district roads have been more than twice, and in some years three times, those of the western-district roads. In 1921 the former's density was 2,357,040 ton-miles, and that of the latter 829,858. Corresponding figures in 1941 were 3,392,964 and 1,358,041, respectively. During all of the 21-year period the western roads were substantially below the United States average, excluding the Pocahontas lines, while the eastern roads exceeded that average by large amounts.

The western district has a larger proportion of branch-line mileage than any other region or district. The ratios of branch-line mileage to total miles of line are as follows:

	Percent
Eastern district	34
Southern region	25
Western district	39

Of the total railroad mileage abandoned under certificates of convenience and necessity issued by us from 1921 to 1941, inclusive, 54.88 percent of the total, or 14,653 miles, was in the western district. Totals in the East and South were 6,988 and 5,056 miles, respectively.

Testimony was offered by southwestern respondents that traffic tests, which they had introduced in evidence in the southwestern revision, indicated that the intraterritorial and interterritorial class and commodity rates prescribed in the original report in that revision, including a then anticipated reduction from 40 to 37.5 in the class 5 percentage relation to class 1, represented an annual revenue loss of roughly $5,500,000. Additional losses were incurred by the

[19] Colorado, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin, Arkansas, Louisiana, Oklahoma, and Texas.

voluntary elimination on August 16, 1941, of the Texas and Oklahoma zone IV differentials and of applying in that zone the zone III rate level. Other reductions also were made by the carriers within the framework of the class-rate adjustment prescribed in the southwestern revision.

Texas intrastate commodity rates.—On commodities that supply 48.99 percent of the total railroad tonnage in Texas, the Texas intrastate rates average 80.4 percent of the rates for equal distances in central territory. On commodities that provide 34.53 percent of the total Texas tonnage, the Texas intrastate rates average 109.7 percent of the central territory rates. The portion of the total Texas tonnage thus represented is 83.52 percent, and on such traffic the Texas intrastate rates average 95 percent of the central territory rates. The witness who introduced in evidence the exhibit from which the comparisons are taken expressed the opinion that the relation of the Texas intrastate rates to the rates in official territory on the remaining 16.48 percent of the Texas tonnage would be approximately the same as the relation of the 83.52 percent of the tonnage included in his study.

Texas intrastate rates are generally lower than (and in other instances the same as) the rates on the same commodities in central territory with respect to the following commodities or commodity groups: Brick (common and face); calves, cattle, goats, hogs, and sheep (stocker or feeder); canned goods; carbon, activated; cotton and linters; cottonseed; cottonseed cake; cottonseed meal; crude sulphur; food preparations; fruits, citrus; fuller's earth; grain, coarse; horses and mules; meat, fresh; nursery stock, dormant; nursery stock, trees, shrubs; oil, cooking vegetable; paper, newsprint; plaster; plasterboard; posts, poles, and piling; rice, rough; pulpwood; road-building materials, including sand, gravel, and crushed stone; scrap iron; tile, drain; potatoes and 20 other fresh or green vegetables; vinegar; and wheat.

The Texas intrastate rates are higher than central territory rates on the following commodities: Acids, muriatic and sulphuric; beer and carbonated beverages; box and crate material; calves, cattle, goats, hogs, and sheep (except stocker or feeder); cement; cheese, in less than carloads; containers, beverage; cotton piece goods; feed, citrus pulp; fertilizer and fertilizer compounds; gas, liquefied petroleum; gasoline; junk, scrap brass, et cetera; kerosene; lime; lumber; oil, crude; oil, lubricating; paper, scrap; parts, plow or cultivator; pipe, cast-iron; pipe, wrought-iron and steel; roofing, prepared; sugar; and tankage.

In preceding cases before us extending over many years the position generally taken by western shipper interests, particularly those in

western trunk-line territory, was that the west-bound rates from official territory were too high to permit jobbers in the West and Southwest to distribute their products in competition with eastern manufacturers. In this proceeding the western interests have shifted their position and now lay emphasis upon the alleged unlawfulness of the east-bound rates. The adoption of the eastern scale for application between official territory and western trunk-line territory and the Southwest would benefit eastern manufacturers because it would reduce the spread now existing between rates from the East and those from western trunk-line and southwestern manufacturing points to a common destination in the last-mentioned territories.

Since 1887, we have made more than 200 reports dealing with class rates within, to, or from western trunk-line territory. Many of these, arising upon complaints of private interests or State commissions, constituted efforts to obtain reduced rates from the East to the West on various manufactured articles. The western and western-southern revisions were the culmination of the foregoing proceedings. In the former there were 18,300 pages of testimony and 1,700 exhibits.

The western trunk-line revision was an outgrowth of Ex Parte No. 87 (Sub-No. 1), in which the western-district carriers had sought increases in their revenues. As a result of our decisions in that revision, the class rates in the eastern portion of western trunk-line territory were increased, but for the extreme distances in the territory the rates were sharply reduced. Thus, the class 100 rate from Chicago to Denver was reduced from 273.5 cents to 254 cents, which by the general increase of 1938 became 279 cents. The interterritorial rates, which usually had been made by combination of certain rates, were reduced, particularly for the long hauls. For example, changes in class 100 rates to Denver were: From Cleveland, Ohio, from 349.5 cents to 289 cents, now 318 cents; New York from 412 cents to 350 cents, now 385 cents; and Boston from 412 to 362 cents, now 398 cents.

The increases granted, particularly on short hauls, have been nullified to a considerable extent by reductions because of motortruck competition. Another result of the western revision was the establishment of the interterritorial key rates prescribed therein on a lower level than would have obtained if the rates between the key points had been based on the distance scales. Thus, reductions in interterritorial rates between key points were even greater than would have resulted from applying the scales; but the key rates are applicable also to and from substantial groups of intermediate points as to many of which such rates are higher than if distance basis of rates were applied to their individual distances.

In the original report in the western trunk-line revision, we prescribed 22 scales lower than class 100, ranging downward from 92.5 to

13 percent thereof, and suggested that future needs for more classes should be anticipated. The present tariffs of western trunk-line railroads provide 86 columns of rates lower than class 100, the lowest being 9 percent. Between points in central and western trunk-line territories, where official classification governs rates east-bound, the railroads have published 122 columns of rates lower than class 100, and where western classification governs west-bound, 110 columns lower than class 100. In the western-southern revision, we required publication of the same 22 columns lower than class 100, but the railroads provided 49 columns south-bound and 46 columns north-bound. Since the original publication 44 additional columns have been established south-bound and 20 additional columns north-bound.

The percentage columns of rates which have been set up within the prescribed rate structures represent: (1) Those we required; (2) those established by the railroads to meet truck competition; and (3) those established for the purpose of working into the rate structure the percentage increases authorized in general revenue proceedings. The latter required, in many instances, intermediate columns.

The Northern Pacific and Great Northern railroads, neither of which is a member of the western trunk-line committee, referred to the fact that years ago class rates between points in Minnesota and North Dakota north and west of the Twin Cities, and points east and south thereof, including official territory, were made by combination of rates based on the Twin Cities, the eastern termini of these northern lines. Sharp reductions occurred in the combinations when they were replaced by the joint rates prescribed in the original report in the western trunk-line revision; but the modifications effected by the sixth supplemental report in that revision raised the rates somewhat, especially for the longer hauls. Although not entirely satisfied with the present class-rate adjustment, these railroads are aware of no circumstances in their territory warranting any basic change therein.

Referring to the proposals herein made by the western trunk-line and southwestern interests advocating changes in the existing rate structures, respondents point out that, except for the proposal for uniformity, essentially the same character of evidence was introduced and the same contentions are made as were before us in the proceedings in which the general revisions of the western trunk-line and southwestern rate structures were made.

An elaborate statistical analysis of economic conditions in selected portions of western trunk-line and central territories was introduced in evidence by respondents. Its purpose was to show that there have not been sufficient changes in such conditions since the western revision to justify the remaking of the zones or leveling of the class rates.

The opposition of the western respondents to the suggested uniformity of class rates may be summarized as follows:

1. The proposal does violence to rules of rate making which have been evolved through decades of experience of this Commission, railroads, and industries.

2. It rests upon false premises.

3. It evades the facts which must underlie any freight-rate adjustment if that adjustment is to have commercial vitality.

4. The suggestion presupposes a country compact and homogeneous throughout its extent, a national commerce of even flow and character, business methods and practices without conflicting interests, and railroad systems which function under identical circumstances and ownership.

5. It involves the merging of unlike things, or the transfer of the peculiar conditions of one section to another section on the fiction that rates need not bear any relation to conditions as they actually exist.

6. It will not accelerate industrial expansion in the West, but, to the extent that "uniformity" is obtained through rate reductions, will admit manufactured products from eastern plants to the West on lower charges and bring revenue losses to these respondents.

7. Such a class-rate readjustment must necessarily exert both direct and indirect influences upon other types of rates, since charges upon high-grade traffic quickly become standards for measuring other rates, and since uniformity in class rates can serve to incite demands for uniformity in other rates.

8. The present intraterritorial and interterritorial class rates were prescribed by us as just, reasonable, and nondiscriminatory under conditions not disturbed by the war, and parties to this proceeding have offered no evidence that such rates have become unjust, unreasonable, or unduly discriminatory by virtue of any pertinent change in conditions. These respondents have reduced many of their charges to levels below the maxima authorized by the publication of classification exceptions or commodity rates, all to the avantage of the public.

MOTOR CARRIERS

Several motor-carrier associations and territorial rate bureaus and conferences introduced evidence. Their interest in this proceeding is to protect motor carriers against a policy of rate making which they consider to be detrimental to them. This policy is said to be the practice of charging noncompetitive traffic of the railroads with operating deficits resulting from noncompensatory rates on rail traffic for which the motor carriers compete. They contend that this policy, if

carried far enough, may eliminate the motor carrier not only from the competitive field, but from the field where it is the economical and efficient agency of transportation.

The motor carriers declare that there are three fields of competitive influence between the railroads and the motor carriers. In the first and largest, where the great preponderance of the traffic and revenues exists, the railroads are the most efficient and economical carrier. The second field is a smaller one and includes the class-rate traffic involved in this proceeding, and is divided between the two types of carriers. In the third field, a still smaller one, which includes less-than-truckload and less-than-carload traffic the motor carriers are said to be the efficient and economical carrier.

They conclude from the Edwards cost studies that many of the existing class rates of the railroads, particularly on less-than-carload traffic, are below marginal cost. Such cost is described as the cost of handling traffic, or a particular class of traffic, which varies more or less directly with the volume of the traffic handled, and is substantially the same as out-of-pocket cost. The motor carriers therefore suggest that separate carload and less-than-carload scales of reasonable class rates be prescribed on bases no less than the compensatory cost of providing the service, surcharged to take into account the fact that the value of the service to class traffic is greater than to any other type of traffic. The term "compensatory cost" is described as the full, distributed cost, including direct, indirect and overhead expenses, charges, and deductions from operating revenue or income, and also the return on value.

They advocate further that, in order to preserve competition between carriers, the prescribed maximum rates should be observed as minimum rates, except where lower rates are necessary to enable respondents to meet those of competing carriers of any type, in which case the marginal cost (out-of-pocket cost) of providing the service should be observed as a minimum.

As a permanent adjustment, these motor-carrier interests favor a uniform classification throughout the United States, to apply on both rail and motor-carrier traffic, but before such a classification can be made effective, they insist that a traffic test should be made in order to determine the effect of the new classification upon the revenues of the carriers. At the hearings they presented a plan for a new classification which has been described in part I of this report, but they do not recommend that this plan be adopted prior to the traffic test. They do not believe that a reliable traffic test can be made until after the termination of the war.

As a temporary adjustment, they suggest that the application of the official classification be extended to all of the territory east of the

Mississippi River, which would include southern territory, and that it be made to apply in connection with scales of class rates constructed according to a plan advocated in their brief. This plan would recognize the important elements of a reasonable rate, namely, the cost of providing the service, the value of the service to the particular traffic or shippers involved, and equality of treatment, but none of these elements would constitute the exclusive criterion.

For the purpose of constructing the class-rate scales the motor carriers accept, with some qualifications, as compensatory costs the costs in the Edwards cost studies introduced at the St. Louis hearing. But they consider to be erroneous the treatment according constant expenses in the later Edwards cost studies introduced at the Indianapolis hearing, in which constant costs were distributed over the revenue-producing units of traffic (that is, revenue tons and revenue ton-miles). In their view this distribution wholly ignores not only wide differences in ability to pay and value of service, but large differences in actual service costs. They submit that it is erroneous to distribute costs upon any basis except that of service, and therefore adopt the basis for distributing constant costs used in the original studies introduced at the St. Louis hearing, namely, on the basis of the directly assigned costs. As indicated in the section of this report dealing with the cost studies, we believe the methods used in the later studies more nearly reflect actual costs.

In their computations, the motor carriers made a test to determine if the year 1939 was typical of normal conditions. They did this by applying the unit costs for 1939, as determined by the Edwards cost studies to the traffic of the succeeding years of 1940, 1941, and 1942, when traffic reached all-time peaks. This test showed that aggregate costs for 1939 were within one-half of 1 percent of the aggregate 1940 costs, within 5 percent of the 1941 costs, and within 18 percent of the aggregate 1942 costs. Despite the tremendous increases in traffic in the years after 1939, the 1939 unit costs are shown to be the lowest. They therefore assume that the 1939 costs are typical of normal conditions, since it is quite unlikely under normal conditions that there would be any greater variation than that between 1939 and the immediately succeeding years.

The motor-carrier interveners contend that less-than-carload traffic is being handled not only at a loss when all costs are included, but at an actual out-of-pocket loss. They conclude that different class-rate scales should be prescribed for less-than-carload traffic than for carload traffic. They submit that there is no justification for charging the less-than-carload revenue deficiency to carload traffic, particularly to such essential commodities as coal, grain, farm products and the like.

They also contend that less-than-carload traffic is usually the type of traffic best able to bear its full share of the transportation burden.

The next element considered in the construction of the scales is value of the service, which has always been given greater consideration in the construction of class rates because of the relatively higher value of the articles which move thereunder. In order that this element be evaluated, the motor carriers consider it necessary to consider class-rate traffic as a whole, and commodity-rate traffic as a whole. A correct and permanent evaluation of this element could only be made after a comprehensive analysis of normal traffic flow and movement, and the data for such an analysis could be obtained only by a traffic test.

As previously stated, the official classification is suggested by the motor carriers for temporary application in the area east of the Mississippi River. For the purpose of constructing their proposed class-rate scales to apply temporarily in that area, the value of service element is evaluated by relating the revenues received from class-rated traffic to the full cost of that traffic in official territory. Excess over cost, assuming that carload traffic is being handled at a profit, is treated as the surcharge above cost which inheres in the present carload class rates under the official classification. The computation shows that carload class traffic in official territory produced revenues in 1939 which, including profit, were 136 percent of costs. This percentage is adopted by the motor carriers as indicating the weight given to value of service in the official classification to traffic now moved at class rates under that classification; and also as indicating the weight to be given to that element to traffic hereafter moved in the proposed new eastern-southern territory under such classification.

As motor carriers actively compete with railroads for less-than-carload traffic, it is assumed that the commodity content of railroad less-than-carload traffic is not materially different from the traffic transported by motor carriers. It is also assumed that the commodity content of less-than-carload traffic is substantially the same as that of carload class-rate traffic. Therefore, the same surcharge is used for less-than-carload traffic as determined for movements of carload class-rate traffic.

The next step was to determine the number of class scales necessary to take into account the wide variations in cost due to difference in net load of the car, and to expand into the six primary classes of the official classification the single or composite scale made up of the average line-haul and terminal costs. The average railroad load of 10 tons in 1942 was used as the basis of the less-than-carload scale. Average net loads in 1939 of carload class traffic in both official and

southern territories varied from less than 10 tons to more than 40 tons. Included within these limits are three fairly well-defined and more or less homogeneous weight groups. These are a light-loading group averaging a little in excess of 10 tons per car, a median group slightly in excess of 20 tons per car, and a heavy group averaging about 30 tons per car. The motor carriers suggest three carload scales to include commodities having the average loadings shown:

Scale I. Light-loading commodities, minimum weight between 5 and 15 tons, average load between 8 and 12 tons.

Scale II. Median-loading commodities, minimum weight between 15 and 20 tons, average load between 18 and 22 tons.

Scale III. Heavy-loading commodities, minimum weight of 20 tons or more, average load of over 20 tons.

To arrive at the average or composite revenue per 100 pounds for the average distance on carload class traffic, the motor carriers grouped 39 statistical class carload groups into the three carload weight groups previously described in accordance with their respective average loads in official territory for 1939, showing for each commodity and group the revenues, tons, ton-miles, and average haul, and computed the composite rate and its relation (composite rating) to the actual first-class rate. The service unit costs were then converted into price unit costs, and the resulting less-than-carload and carload line-haul and terminal factors, increased 10 percent for circuity and 36 percent for value of the service, were then expanded into first-class rate factors by dividing by the composite ratings.

A summary of the first-class scales thus arrived at, compared with the eastern and southern first-class rates, is shown in the following table:

Proposed compensatory scales

Miles	Present first-class rates		Proposed first-class rates			
	Official	Southern	Less carload	Carload minimum weight		
				Under 15 tons	15 to 20 tons	Over 20 tons
	Cents	*Cents*	*Cents*	*Cents*	*Cents*	*Cents*
10	34	40	116	44	37	3
50	47	57	126	54	45	3
100	63	79	137	65	56	4
150	73	96	149	77	67	5
200	80	113	161	89	79	6
300	96	134	184	113	101	8
400	109	156	208	136	123	10
500	122	173	232	160	145	12
700	149	206	279	207	189	16
900	171	238	326	254	233	20
1,000	182	254	350	278	255	22
1,200	204	286	397	325	300	26
1,400	226	318	445	372	344	30

For the purpose of testing the revenue results of the proposed carload scales, a comparison was made of the 1939 revenues in official and southern territories for the three carload commodity groups set up by the motor carriers with the revenues which would result by applying to such traffic the carload rates under the proposed scales. This comparison shows that in the East there would be gains in revenues of 25.1 percent in scale I commodities, 9.2 percent in scale II commodities, and a loss of 14.3 percent in scale III commodities. The overall gain in the East is shown to be $13,600,000. In the South, there would be a gain of 2.5 percent in scale II commodities, and losses of 1.2 percent and 12.5 percent in scale I and scale III commodities, respectively. The overall result in the South would be a loss of $1,070,000. With respect to less-than-carload traffic, the overall gain in the East would be $104,000,000, and in the South $37,000,000.

The increase in less-than-carload revenues indicated would, in the opinion of the motor carriers, be greater than would be actually realized, it being their conviction that on the basis of motor-carrier costs introduced in other proceedings maximum reasonable rates of motor carriers would be on a lower basis than many of the compensatory class rates which they propose for the railroads; and that this situation would result in the voluntary reduction by the railroads of their rates to the level of reasonable rates based upon truck costs, in order that the railroads could compete with the motor carriers for less-than-carload traffic.

The position of the motor carriers is, however, that to preserve competition and to avoid unjust inequalities, the railroads should not be permitted to depart from the prescribed reasonable compensatory rates, except to the extent necessary to meet the competition of other carriers, rail or motor, and that when there is such departure, they should be required to observe marginal cost scales as minima. They state that it is possible for railroads to reduce class rates to a level at which the motor carrier cannot operate and to make up the deficit resulting from the handling of this traffic by applying higher rates on noncompetitive traffic; and unless the railroads are prevented from going below a minimum basis on the competitive traffic, competition by motor carrier will eventually be eliminated.

They, therefore, suggest so-called marginal scales for carload and less-than-carload traffic, constructed substantially the same as the proposed compensatory scales, and differing only in the following respects: (1) Only the out-of-pocket cost is included in the scale; (2) circuity is taken into consideration, but not the element of value of service; (3) only one class is provided for the marginal scales because they represent the minimum cost of providing service for any

class traffic. The proposed marginal scales are shown in the following table:

Proposed marginal scales

Miles	Less than carload	Carload		
		Under 15 tons	15 to 20 tons	Over 20 tons
	Cents	*Cents*	*Cents*	*Cents*
10	42	12	6	3
50	45	14	7	4
100	48	16	9	5
150	52	19	10	6
200	56	21	11	7
300	63	27	14	9
400	70	32	17	11
500	78	37	20	13
700	93	47	26	17
900	108	57	32	21
1,000	115	62	35	23
1,200	130	73	41	27
1,400	145	83	47	31

With respect to rates in the area west of the Mississippi River, the motor carriers had little to say, except to insist that the rate level there should be higher than in the East.

In order to assure stability in the operations of both types of carriers, the motor carriers strongly urge that the classifications and the rate scales be established concurrently for both rail carriers and motor carriers.

STAFF RATE-STRUCTURE STUDIES

Prior to the first hearing, a study entitled "Some Suggestions for Improvements in Railroad Class Rates," previously referred to in part I, was prepared by a rate specialist on our staff, and was distributed to the public. It was introduced in evidence at the St. Louis hearing, and its author, who at that time was our classification expert, was made available for examination. The study had not been approved by us and reflects only the views of its author. It is not based upon the evidence of record. Suggestions made in the study did not meet with the approval of the parties, except that the suggestion advocating removal of the Florida arbitraries was favored by southern proponents of changes in the class-rate structure. Most of the other suggestions were strongly opposed. We have given consideration to this testimony, and our own views on the matters discussed appear elsewhere herein.

GENERAL CONCLUSIONS AND ULTIMATE FINDINGS

NATURE AND SCOPE OF THE EVIDENCE

Appropriate to the breadth and variety of the interests involved in this proceeding, the record has not been narrowly restricted to rate

comparisons and the competitive and other effects of rates upon particuluar industries or individual shippers, but has been developed within a sufficiently broad perspective to permit us to consider all the essential circumstances and conditions which affect the welfare of carriers, of producers, shippers, and consumers, and of localities, districts, regions, and territories. More specifically, cost of service has been explored and analyzed more comprehensively and thoroughly than in any other similar investigation. Studies and analyses have also been made of the natural resources of the areas concerned and of the growth and development of these areas in terms of agricultural, forest, and mineral production, manufacturing, and distribution of population. Other analyses have dealt with the composition and movement of traffic and with employment, labor, and income.

The record also affords us an opportunity to analyze and appraise the functioning over a period of more than 12 years of different territorial class-rate structures. It enables us also to compare the results of such a test one with another, to check such results with the purposes intended to be accomplished when these rate structures were prescribed, and on the whole to translate into our conclusions all the lessons thus learned by experience.

In the former general class-rate revisions attention centered primarily in the prescription of more uniform adjustments of rates to fit the local conditions prevailing within each of the four major class-rate territories included in the present investigation. The nature and sequence of those proceedings did not permit a simultaneous harmonization or integration of the several intraterritorial class-rate structures.

Each of the above-mentioned intraterritorial revisions represented a marked improvement over the rate situation previously existing, and each of them corrected numerous discriminations that had long existed within the respective territories, and resulted in much more harmonious intraterritorial rate adjustments. In the present investigation the principal emphasis has turned towards the problem of harmonizing the widely differing intraterritorial class-rate structures of the various territories. Cost studies of the character of those introduced into the record in this proceeding were not before us in the former investigations.

RECENT AMENDMENTS OF THE ACT

While the rates in issue in this proceeding are to be tested by all pertinent provisions of the act, it is important to give particular attention to certain amendatory legislation which Congress has recently enacted. By the Transportation Act of 1940, section 3 (1) of the act was amended by the addition of the words "region, district.

territory." Coupled with that amendment was a provision designated as section 5 (b) of the amendatory act of 1940. It authorized and directed us to investigate the rates on manufactured products, agricultural commodities, and raw materials between and within classification territories for the purpose of determining whether such rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other, and to enter such orders as may be appropriate for the removal of any unlawfulness found to exist. As previously explained herein, we have advised Congress that it might consider the instant proceeding as an investigation under this special legislation.

Another new provision was attached to the Transportation Act of 1940 and designated as the "National Transportation Policy." In general terms, Congress undertook to express the policy which it had in mind in providing for the regulation of all modes of transportation and required that all provisions of the act shall be administered and enforced with a view of carrying out that policy. One of the declared purposes in this declaration of policy is "to encourage the establishment and maintenance of reasonable charges for transportation services without unjust discriminations, undue preferences or advantages, or unfair or destructive competitive practices."

Have these amendments to the act added any new inhibitions against discrimination or enlarged the power of the Commission over this subject? In seeking an answer to this question it is pertinent and helpful to review briefly the legislative background of these amendments.

Unjust discrimination in various forms was the principal evil aimed at in the original Act to Regulate Commerce. *Louisville & Nashville R. Co.* v. *United States*, 282 U. S. 740. The major antidiscrimination provisions of the act, sections 2 and 3, were modeled upon the English Railways Act of 1854. *Import Rate Case*, 162 U. S. 197. The United States Supreme Court declared in *The Shreveport* case, 234 U. S. 342, referring particularly to section 3 which had remained unchanged up to that time since its original enactment, that the language "is certainly sweeping enough to embrace all the discriminations of the sort described which it was within the power of Congress to condemn." As originally enacted and as it remained until 1940, section 3 did not in terms specifically prohibit discrimination against a region, district, or territory. It specified, after the amendment of 1935 hereinafter discussed, only a person, company, firm, corporation, association, locality, port, port district, gateway, transit point, or particular description of traffic. The only word in that series that refers to a geographical unit (other than any one of those in the subseries concerning the special subject of ports and other gateways, not

here apposite) is "locality." This word can apply to a region, district, or territory only in a plural sense. When used in that sense, however, the remaining is not as appropriate as that denoted by the more exact words added in 1940, since an aggregation or plurality of localities is not the same thing as a region, district, or territory. The same observation might be made also as to the other objects mentioned in this section—person, company, firm, corporation, or association. Assuming that those words are sufficient to comprehend all shippers and receivers of freight in any given region, district, or territory—and they undoubtedly are—they do not have the same significance as the latter group of words. A region, district, or territory usually imports a definite entity, geographically, economically, and socially, and the word "territory" as applied to rate making has come to have a special meaning of its own, indicating a separate and distinct rate structure. The legislative history of the amendment of 1940 discloses quite clearly that Congress was aware of that special transportation significance.

The amendment of 1935 was the result of a decision of the Supreme Court in *Texas & P. Ry. Co.* v. *United States*, 289 U. S. 627, holding that the word "locality" did not include a port or port district. Congress corrected this deficiency by an act approved August 12, 1935 (49 Stat. L. 607) in which "port, port district, gateway, transit point" were added to section 3 (1). We had occasion to pass upon the effect of this amendment in *Albany Port District Comm.* v. *Ahnapee & W. Ry. Co.*, 219 I. C. C. 151. The Albany Port District, by complaint before us, had contended that the existing adjustment of rates on export, import, coastwise, and intercoastal traffic precluded its development as a port district inasmuch as lower rates on similar traffic applied to and from other north Atlantic ports. The defendants, relying upon the decision of the Supreme Court in *Texas & P. Ry. Co.* v. *United States*, *supra*, and other cases, contended that they could not be held liable for undue prejudice against the port of Albany, the traffic through that port, or shippers of such traffic, because there was no common source of discrimination and because no one carrier or group of carriers could remedy the situation under an alternative order issued in conformity with section 3 (1) of the act. In answer to that contention, we first examined the rate structure which caused the complaint of the Albany Port District and found that it was not a "loose aggregation of separately established rates, but a single entity composed of interrelated rates bound together by the port differentials." Then, after tracing the legislative history of the amendment, we declared that it was intended to cover just such situations. The description of the rates of which the Albany Port District complained—that is, that they are not a loose aggregation of separately established rates but a single entity composed of interrelated rates—is

particularly apropos of the territorial and interterritorial rate structures with which we are concerned in this proceeding.

Considering the breadth of the language used in the amendments here under consideration, the evils sought to be cured by this legislation, the history of the times when the law was amended, as well as the statements of the legislators as to the purposes of the amendments [11]—

[11] The amendment enacted in 1940 to section 3 (1) of the act was contained in a Senate bill designated S. 2009. That bill was reported favorably by the Senate Committee on Interstate Commerce in Report No. 433, 76th Congress, 1st Session, which was presented to the Senate by Chairman Wheeler of that committee on May 16, 1939. At page 11 of that report, the committee stated with respect to section 3 (1): "There has been no substantial change therein, except that the words 'region, district, and territory' appearing in lines 20 and 23 on page 26 have been inserted." In explanation of this amendment, Chairman Wheeler said to the Senate on May 22, 1939: "The previous provision with regard to 'discrimination' simply referred to discrimination as to 'locality, port, port district, gateway, transit point' without specifying the region, district or territory. So we felt that by broadening the language we would at least take away that excuse, and we would provide expressly that the Commission should not discriminate in its rate structures." (Congressional Record, page 5889, vol. 84, part 6, 76th Congress, 1st Session.)

This bill was debated further in the Senate on May 24, 1939. With respect to another amendment for the removal of rate discriminations between territories that had been proposed by Senator Miller of Arkansas, Chairman Wheeler said: "The amendment, in my judgment, would not do what the Senator from Arkansas wants to do with reference to discrimination. Let me say to the Senator that the amendments we have already put into the bill go much further toward accomplishing the purpose the Senator has in mind than would this amendment. I am in thorough accord with the statements made by the Senator from Arkansas with reference to discriminations. I think they ought to be stopped, and if the Commission pursues the investigation and follows what we have laid down in this bill, many of the discriminations between territories will be eliminated. A great many are absolutely arbitrary, and it seems to me without any justification." (Congressional Record, pages 6071 and 6072, vol. 84, part 6.) Thereupon Senator George commented as follows: "I am glad to hear the distinguished Senator make that statement, because it seems to me to be more important, and I dare say it is more important as the coming days of the Congress must demonstrate, that we establish just and nondiscriminatory rates between the various regions than to continue even a rate that may not be justified in a particular region." On the same page of the Record (6072) is found this question directed by Senator George to Senator Wheeler with respect to the amendment of section 3 (1) of the act: "The Senator thinks that it will make toward the equalization of rates in the various regions?" To this question, Senator Wheeler replied: "I do not think there is any doubt about that at all, because that is the purpose of the bill; it is the intention of the bill."

This bill (S. 2009) passed the Senate on May 25, 1939, and was sent to the House. After consideration of the bill by the House Committee on Interstate and Foreign Commerce, Chairman Lea of that committee reported it to the House without appreciable change in the amendment to section 3 (1) of the act that had been approved by the Senate. With reference to this amendment and the provision coupled with it (known in the House as the Ramspeck resolution) which directed us to investigate interterritorial and intraterritorial rates, Chairman Lea said to the House on July 21, 1939: "Now I want to refer for a moment to the Ramspeck resolution. That is embodied in this bill. It directs the Interstate Commerce Commission to make an investigation of certain freight differentials, and then to make the orders that are necessary to remove the unlawfulness of rates found to be unlawful. It further provides, in the provisions prohibiting discriminations, the protection of territories and districts. In my judgment that resolution is directed at what is one of the most important situations in rate structure. It points to a place in our rate structure where the greatest opportunity to help our transportation system on an economic basis lies. The correction of that condition would serve the interests of shippers and carriers alike." (Congressional Record, page 9705, vol. 18, part 9, 76th Congress, 1st Session.)

On July 26, 1939, the House passed this bill as amended, and sent it to conference with the Senate. After the conference report had been adopted by the Senate, Senator Hill, chairman of a subcommittee that had held hearings on the measure, stated to the Senate

all proper aids of statutory interpretation—it is clear that the main purpose which Congress had in mind was to bring about a greater degree of equalization, harmony, and uniformity in the different regional or territorial rate structures of the country. The method employed to accomplish this purpose is equally plain. By the amendment to the substantive antidiscrimination provisions of section 3 (1) all discriminations in the form of undue or unreasonable preference or advantage, or undue or unreasonable prejudice or disadvantage, as between regions, districts, or territories, viewed as separate entities, were brought directly within the purview of the act along with all the other inhibitions previously included. We were then authorized and directed by the other provisions mentioned to remove any such discriminations found to exist in a proper proceeding. This means that such discriminations as those mentioned which result from differences in the methods of distributing the general rate burden in the several rate-making territories, or from any other cause, if not justified upon proper consideration of recognized elements of rate making applied in the light of the amended law are unlawful and should be corrected.

COSTS OF SERVICE GENERALLY

Since the inception of Federal regulation of common carriers cost of service has been recognized as one of the basic elements entering into the process of making and judging rates. It has never been out of mind even though it has not always been in sight. *Lake Cargo Coal Rates, 1925*, 101 I. C. C. 513. The reality of costs in the rendition of transportation service is indisputable. The problem, from the standpoint of rate making and rate regulation, is to convert such costs into practicable and usable terms. Cost finding as applied to common carriers has been and still is a progressive science. The carriers have never installed or observed, because of the expense involved, a system of routine cost accounting. All cost calculations and computations, therefore, of necessity must be made by special studies. In making these studies the data afforded by the carriers' records, which are kept in accordance with our prescribed system of accounting, have been used as a base, but this material has generally been supplemented and

on September 9, 1940, with respect to the amendments here considered: "Under these amendments any undue or unreasonable preference or advantage of one region, district, or territory over another region, district, or territory is made unlawful and prohibited and the Interstate Commerce Commission is directed to investigate immediately and upon finding such undue or unreasonable preference or advantage to exist to enter such orders as may be necessary for the removal of same. Under these amendments now to become the law of the land the unjust and unfair discriminations between sections in freight rates should be removed and all sections of our country permitted to enjoy that development and prosperity to which the character and genius of their people and their natural resources entitle them." (Congressional Record, page 5553, appendix, vol. 86, part 17, 76th Congress, 3rd Session.)

reinforced by such special information and field investigations as the necessities in each case have required. Pursuit of this method of cost finding over the years has enabled us, with the assistance of the carriers, shippers, and other students of the subject, to make extensive progress in this field. While perfection has not been attained, we are convinced that the studies made and presented by members of our staff as evidence in this proceeding possess sufficient attributes of accuracy to enable us to rely upon them in reaching our conclusions. Respondents have not supplied us with any better ones, although they have, through their criticisms and suggestions, enabled us to make a better analysis and appraisal of those introduced by members of our own staff.

There are different degrees of refinement in costs depending upon the purposes for which the costs are intended. The ascertainment of the costs of transporting a particular commodity over a single railroad or a group of roads, for instance, obviously requires more refinement in procedure than the calculation of relative costs for transporting all traffic, or important and well-defined segments of traffic, by territorial groups of carriers. It is the latter type of cost computation that we now have before us. The methods employed, the procedures followed, and the results obtained have been previously explained and discussed.

Discretion and flexibility of judgment within reasonable limits have always attended the use of costs in the making of rates. Costs alone do not determine the maximum limits of rates. Neither do they control the contours of rate scales or fix the relations between rates or between rate scales. Other factors along with costs must be considered and given due weight in these aspects of rate making. Out-of-pocket costs, however, should ordinarily establish the floor of all rates. Rates yielding merely out-of-pocket costs have been condemned as being less than reasonable minima. *Freight, All Kinds, Lincoln, Omaha, and Nebraska Points*, 32 M. C. C. 339; *Petroleum from South Atlantic Ports to Southeast*, 245 I. C. C. 23; *All Freight from Eastern Ports to the South*, 251 I. C. C. 361. Rates which yield something more than out-of-pocket costs have also been found to be less than reasonable minima. *Petroleum Between Washington, Oregon, Idaho, Montana*, 234 I. C. C. 609; order sustained, *Scandrett* v. *United States*, 32 Fed. Supp. 995, *Scandrett* v. *United States*, 312 U. S. 661.

Moreover, it has long been recognized that it is unwise from the standpoint of both shippers and carriers to attempt to reflect in any rate schedule or rate structure all the minute and unsubstantial variations in the costs of service that occur on different divisions or segments of the same railroad or between individual railroads or groups of railroads. The tendency has been, rather, to deal with average costs in

such manner as to avoid needless rate variations and to permit the freest possible movement of traffic. We recognized this principle very early in our existence. *In re Proposed Advances in Freight Rates*, 9 I. C. C. 382; *City of Spokane* v. *Northern Pac. Ry. Co.*, 15 I. C. C. 376; *Kindel* v. *New York, N. H. & H. R. Co.*, 15 I. C. C. 555; *Receivers & Shippers Assn.* v. *C., N. O. & T. P. Ry. Co.*, 18 I. C. C. 440; *Commercial Club, Salt Lake City* v. *A., T. & S. F. Ry. Co.*, 19 I. C. C. 218; *Advance in Rates—Eastern Case*, 20 I. C. C. 243; *Lum* v. *Great Northern Ry.*, 33 I. C. C. 541, and have followed it ever since. The rule of rate making embodied in section 15a of the act emphasizes and accentuates the importance of this principle.

Applying the foregoing principles to the issues in this proceeding, there is no doubt that, based on cost of service considerations, the differences in levels, schemes, and progressions of scales that at present occur in the several territorial class-rate structures here under review are not justified.

CONSISTS OF TRAFFIC AND DISTRIBUTION OF GENERAL RATE BURDEN

Respondents' principal argument against a uniform level of class rates in the rate-making territories here under consideration is that the consists of traffic in the several territories, particularly in southern, southwestern, and western trunk-line, as compared to official, are so substantially dissimilar and variant that separate schemes of rates with different distributions of the general rate burden as between commodities and classes of traffic must prevail; and that, because of the greater percentage of high-grade traffic moving in official territory, a lower and different system of class rates is justified in that territory than in the others. These contentions and the evidence relied upon to support them have heretofore been discussed. It is only necessary here to state our final conclusions.

When analyzed in detail there are many more differences in the consists of traffic in these respective territories than when basic commodity groups, such as those used by us in the compilation of traffic statistics, are considered. Mere differences in the nomenclature or commercial characteristics of commodities, however, are of little significance in the determination of this question. The problem is primarily one of providing adequate revenues for the carriers from the traffic which they transport. It is, therefore, the revenue-producing qualities, or rate-bearing characteristics, of the commodities which compose the commerce of these territories that constitute the governing factor in this situation. The fact that phosphate rock moves regularly in substantial volume by railroad in southern territory while moving only sporadically and in small quantities in each of the other territo-

ries, for instance, means little or nothing if some other commodity or commodities with equal revenue-producing potentialities are at hand to take the place of it in the general rate structure of the other territories. Furthermore, a large and increasing volume of traffic flows across territorial boundaries and thus becomes common to two or more territories. When analyzed in this light, the differences that exist in the consists of traffic in these respective territories are not so substantial or of such character as to warrant the present differences in class rates.

The record discloses that the class rates are substantially higher in southern, southwestern, and western trunk-line territories than in official territory, and that the interterritorial class rates between official and the other territories are substantially higher than those in official territory. These differences have resulted in a greatly diminished use of class rates and the establishment of numerous exceptions to the classifications, together with column and commodity rates, on a lower level than class rates. The great preponderance of traffic now moves on the exception, column, and commodity rates.

A study of the movement of all carload traffic transported on September 23, 1942, and of the revenue received therefrom affords an indication of the relative importance of the traffic moving on the several kinds of rates. In the United States, as a whole, class rates were applied on 4.1 percent of the carloads and produced 6.3 percent of the revenue; exception rates were applied on 10.7 percent of the carloads, and produced 16.1 percent of the revenue; commodity rates applied on 85.2 percent of the carloads and produced 77.6 percent of the revenue. Within the respective territories, class rates applied on 5.8 percent of the carloads in official territory, 1.8 percent in southern, 0.6 percent in western trunk-line, and 2.4 percent in southwestern. On interterritorial traffic from official territory to the other territories, the volume of movement at class rates ranged from 12.3 to 22.5 percent of the carloads. From the other territories to official territory, the movement at class rates ranged from 0.9 percent to 3.1 percent of the carloads.

Although manufacturing has grown in the South and Southwest and to a lesser extent in western trunk-line territory in the last decade, it is still vastly less in diversification and amount than in official territory. The increases in manufacturing in these territories has created a demand for rates which will at once permit the free movement of the manufactured articles, but because of the level of the intraterritorial and interterritorial class rates, such free movement has been impeded insofar as such commodities move at class rates. In most instances it has been necessary either to reduce the class-rate levels or to establish exception or commodity rates in order that the manufactured products may move freely, and this action has frequently been subject to long

delays because of the failure of individual carriers or groups of carriers to agree upon a basis.

Official territory is the greatest consuming territory in the country, and is the market that nearly all manufacturers desire to reach, particularly where they have a surplus of their products to sell. In shipping to official territory, manufacturers in the other territories not only have the disadvantage of location, but are subjected to an additional burden in those instances where they must pay class rates on a much higher level than their competitors in official territory. This situation reacts to the disadvantage of manufacturers in the other territories, and to the advantage of those in official territory, tends to restrict the growth and expansion of the manufacturers in the other territories, and, to some extent, to prevent the establishment of new manufacturing plants in those territories.

It is clear that the method of distribution of the rate burden between types of traffic now observed in southern, southwestern, and western trunk-line territories has resulted in rates so high that they have prevented the free movement of traffic at the rates in issue. This result is fully proved by the fact that numerous lower exception and commodity rates which move the great preponderance of the traffic and produce the great preponderance of the revenues in those territories, have been established.

One of the principal contentions of southern and western respondents, and of certain industrial interests, is that the establishment of the eastern level of class rates in the South and West will require upward revisions of exception, column, and commodity rates in order that the railroads may recoup revenue lost from the reduced class rates. They show that many of the exception and column rates in the South and West are higher than the eastern level of class rates, and contend that establishment of the eastern class-rate level in those territories would require reductions of those exception and column rates which are higher than the eastern class rates, thereby further reducing respondents' revenues. These contentions are directed against the establishment of the eastern class-rate level in the other territories but are not an answer to the claim that the differences between the intraterritorial and interterritorial class rates in and between the several territories are not justified by transportation conditions. Considerations of costs of service, consists of the traffic, distribution of the rate burden, and other factors usually given weight in determining lawful rates justify the conclusion that the class rates within southern, southwestern, and western trunk-line territories, and between those territories and official territory are unjust and unreasonable, and that the class rates to official territory from the other territories are

unduly prejudicial to such other territories and unduly preferential of official territory.

COSTS OF LESS-THAN-CARLOAD SERVICE

There is another question in this proceeding concerning less-than-carload rates in all territories and between such territories in connection with which costs must be specially considered. It has been alleged by the motor-carrier interveners that the cost studies clearly demonstrate the failure of this category of rates to cover their fair share of the burden of transportation. At the present time, the same set of class rates is applicable both to carload and less-than-carload shipments, the classification being used as the means of effectuating rate differentiations between the two types of shipments. Since the prescription of these rates, the railroads have generally inaugurated pick-up and delivery service at terminals, which has augmented the costs of less-than-carload transportation. The record permits us to compare the weighted-average less-than-carload rates, as well as individual less-than-carload scales, with the computed costs for this traffic. The railroads generally load and unload less-than-carload traffic and this entails an expense not assumed in connection with carload traffic. One of the results of this method of handling less-than-carload shipments, however, is to mix freight of different classes in the same railroad car for transportation purposes, so that the costs are generally a composite of all classes of less-than-carload freight rather than a separately ascertainable figure for each commodity. The weighted-average rate is, therefore, the best criterion for judging the sufficiency of the less-than-carload rates in the light of the costs. Such an analysis unmistakably reveals the fact that less-than-carload traffic generally in all the territories is not bearing its proper share of the costs of transportation—in fact, excluding wartime loading, it is not yielding, on the average, its out-of-pocket costs plus constant expenses solely related to this traffic, plus the cost of collection and delivery, in any territory except possibly in the southern where the margin of difference between revenues and these expenses is slight.

RATE AND REVENUE COMPARISONS

Many comparisons of rates and rate levels have been made in the record before us. In some of these comparisons an attempt has been made to measure the average levels of the several territorial class-rate structures. Others have dealt with particular rate schedules; but much stress has been placed upon comparisons of average levels. Comparisons of this nature, although important as steps in the process of gaging the general effect of rate structures upon the economy of a region or territory, and upon the total revenues of the carriers, do

not furnish adequate answers to complaints of individual shippers and receivers of freight. The latter are necessarily interested in the competitive problems growing out of the relations of individual rates upon the same or similar commodities, and the law recognizes such an interest. This evidence discloses extensive, widespread, and varying differences in the several territorial class-rate structures. The differences in the class rates themselves, however, are greater than the average differences in the rate structures as a whole, or than the average differences in class rates, exception rates, and column rates taken together. The basic class-rate scales not only differ in level but also in their rates of progression with distance. There are also disparities and variations in the percentage relations between the scales.

The origin of the foregoing condition as it relates to interterritorial as contrasted with intraterritorial rates may be explained by a study of our previous decisions in which the several territorial class-rate structures were prescribed. Prior to the dates of those revisions, there was a general miscellany of class rates prevailing within each territory as well as extensive differences, on the average, between the territories. Those decisions resulted in the prescription of intraterritorial class-rate structures that exhibited a marked and previously unattained degree of uniformity and consistency. They failed, however, to effectuate uniformity as between the territories. As a result of this incongruous situation, the interterritorial rates could not be properly harmonized with the intraterritorial rate structures. Interterritorial shippers using class rates are thus adversely affected, particularly when they ship into official territory where the greatest disparities between interterritorial and intraterritorial rates exist. The record indicates a distinct probability of continuing growth of interterritorial traffic as a result of changes in the economic pattern of the country. All territories are experiencing an industrial growth. This fact emphasizes the need for properly adjusted interterritorial class rates.

PURPOSES OF A CLASS-RATE SYSTEM; DEPARTURES THEREFROM IN PRESENT CLASS RATES

One of the expressed purposes in view in the prescription of the class rates in the several territories here involved was to provide class-rate systems that would actually move a substantial volume of traffic and not merely sporadic shipments of miscellaneous freight. In other words, it was felt that the proper function of a system of class rates was to serve not merely as a pattern or as points of departure for rates generally, but to take care of the needs of shippers for reasonable and nondiscriminatory rates on an important class of traffic. The evidence before use, however, indicates that in most of the territories—namely, in southern, southwestern, and western trunk-line—these

purposes have not been accomplished. The same thing is true in large measure of interterritorial class rates although, percentagewise, the interterritorial class rates accommodate more traffic than the intraterritorial class rates. This situation is not true to the same extent in official territory. The system of class rates in that territory has served a relatively large volume of traffic.

The record reveals the fact that departures from the bases of class rates prescribed by us, particularly in all territories other than official, and between territories, have become widespread. One phase of these departures has taken the form of exception rates, all-commodity rates, and mixture rules which have, to a considerable degree, supplanted the application of the regular class rates. Another form of departure has centered in changes in the class-rate scales themselves for intrastate application. In some instances, the level of these intrastate rates now approach, or even equal, the official territory level. The reduced class rates are occasionally limited to apply only on less-than-carload traffic. We have also prescribed or approved reductions in the original interstate level of class rates. Instances of this kind are to be found immediately south of the border between official and southern territories in Kentucky, east Tennessee, and North Carolina. The southern carriers have voluntarily reduced in recent years, the class rates in that territory for distances from 5 to approximately 190 miles. The departures in western trunk-line and southwestern territories are more prevalent than in the South.

All the foregoing facts of record indicate that the class-rate systems originally prescribed by us in these several territories do not now serve the purposes for which they were designed.

An over-all disparity has also resulted from these changes in that while the intraterritorial structures have been disrupted by reductions in the scales themselves, the interterritorial class rates have been left on a basis, which is higher, in many instances, than the class rates in either territory of origin or the territory of destination, and the interterritorial class rates apply to a higher percent of the total interterritorial traffic than the percent of intraterritorial traffic moving on class rates.

EFFECT OF CLASS RATE DISPARITIES ON ATTAINMENT OF CLASSIFICATION UNIFORMITY

The class-rate system is not complete without a freight classification. The desirability of greater classification uniformity is elsewhere discussed in our report in this proceeding. In our annual report for 1931, however, we called attention, at page 67, to one of the deterrents against the attainment of classification uniformity which is of interest in connection with our consideration of the class-rate structures. We there said:

Further study of the subject of classification uniformity and the experience which we have gained in recent years in fixing class rates make it increasingly apparent that, while complete unification and merger of the southern and western classifications is possible, such unification cannot be fully extended to embrace the official classification unless and until there is a closer alignment of the basic rate structures as between official territory and the other sections of the country than it has so far been found practicable to accomplish, although revisions heretofore required by us have been in that direction.

The force of that comment is apparent. A satisfactory degree of classification uniformity cannot be attained without a closer alinement of the basic class-rate structures.

SHORT- OR WEAK-LINE ARBITRARIES AND RAIL AND WATER RATES

It has been the custom heretofore to permit arbitraries to be added to the basic rates for the benefit of short or weak lines of railroad, but in only one or two instances has a request been made on this record for the continuation of such arbitraries. The evidence is therefore insufficient to enable us to determine the general question of arbitraries of this character. Rail-and-water rates are also technically included in this investigation, but at the present time the common-carrier water service along the coast has been suspended on account of the exigencies of the war. For that reason we have not had the opportunity to hear from the water lines concerning their future interest in such rates. Both of these matters, therefore, will be reserved for later consideration.

KEY POINT RATES

In all of the general class rate revisions since the southern revision we have prescribed key rates for the longer distances and have not required a rigid application of the scales or formulas adopted. All scales and formulas based on short-line mileages result in fourth-section departures over reasonably direct and heavily traveled routes. The present key class rates were designed to meet competitive conditions between related or contiguous cities, to avoid fourth-section departures, and to diminish the number of individual rates which must be computed and published. Carriers may submit for our approval key-point class rates based on the scale herein found reasonable between points where such rates were prescribed by us in the prior general class-rate revisions.

ULTIMATE FINDINGS

Upon the record, therefore, we ultimately find:

1. That the intraterritorial class rates (except as they apply to rail-and-water coastal service or relate to short- or weak-line arbitraries) applicable within official, Illinois, southern, southwestern, and western

trunk-line territories, are, and for the future will be, unjust and unreasonable, in violation of section 1 (4) and (5) (a) of the act.

2. That the interterritorial class rates in issue in this proceeding applicable between official, Illinois, southern, southwestern, and western trunk-line territories are, and for the future will be, unjust and unreasonable, in violation of section 1 (4) and (5) (a) of the act.

3. That the relation between the interterritorial class rates applicable from southern, southwestern, and western trunk-line territories to official and Illinois territories, on the one hand, and the intraterritorial class rates applicable within official and Illinois territories, on the other hand, makes, gives, or causes, and for the future will make, give, or cause, undue and unreasonable preference and advantage to official and Illinois territories as a whole and the shippers and receivers of freight located therein, and subjects and for the future will subject, southwestern, and western trunk-line territories as a whole and the shippers and receivers of freight located therein to undue and unreasonable prejudice and disadvantage, in violation of section 3 (1) of the act.

4. That a just and reasonable basis of class rates, not unjustly discriminatory or unduly preferential or prejudicial, to be observed by the respondents with respect to the traffic described in findings 1, 2, and 3 immediately preceding, will be the following:

(*a*) The application as a maximum for class 1 (class 100) of the scale of rates shown in appendix 10.

(*b*) The rates herein prescribed are to be applied to the distances over the shortest possible rail routes by which carload traffic can be interchanged between carriers without transfer of lading.

(*c*) That the scales of class rates for each class, other than class 1 (class 100), shall bear the percentage relations, to class 1 (class 100) rates found in part I hereof to be just, fair, and reasonable for the classes in the uniform classification. Appendix M to *Western Trunk Line Class Rates*, 164 I. C. C. 1, 282, contains a table which shows the percentages of class 100, below 100, herein found reasonable; and shows the rates which will result from applying these percentages to any given rate from 30 cents to $4. The rates shown in this table should be applied in establishing the rates for classes below 100. For classes above 100, fractions of a cent should be disposed of by dropping those less than one-half and by increasing those of one-half cent or more to the next whole cent.

(*d*) Key-point class rates based on the scale herein found reasonable may be established subject to our approval between points where such rates were prescribed by us in the prior general class rate revisions.

(*e*) That such class rates shall apply to the ratings of commodities

taking class rates as the same shall be rated in the uniform classification found to be just, fair, and reasonable in part I hereof.

(*f*) That such revised uniform class rates and classification ratings shall be made applicable simultaneously.

In part III hereof, which follows, we will determine an interim adjustment of class rates, based upon the maintenance of the existing classifications, pending the necessary revisions of the classification and rates above required.

PART III

AD INTERIM CLASS RATE REVISION

In parts I and II of this report we have found the classification ratings and class rates involved in this proceeding to be unjust and unreasonable, and unduly and unreasonably preferential and advantageous, as well as unduly and unreasonably prejudicial and disadvantageous in certain respects for the reasons therein stated. It is our duty under section 15 (1) of the act to determine and prescribe what will be the just and reasonable rates and charges, and what classification will be just, fair, and reasonable, to be hereafter followed.

The record herein is extensive, but from the very nature of these proceedings the comprehensive basis of just and reasonable rates cannot at this time be established in connection with a uniform classification such as we have found to be required as just, fair, and reasonable, until that classification is brought into being. The comprehensive rate revision and classification unification and revision should be accomplished simultaneously, if possible. From our prior experience with extensive rate readjustments and classification proceedings, and from the record in this proceeding, we know that necessarily considerable time must elapse before the respondents can formulate and tender for our approval a classification which will conform to our finding with respect to justness, fairness, and reasonableness. The many complexities inherent in a task of such character and magnitude are inevitable. The shipping public and rate-making authorities of the States should be afforded opportunity for participation in the undertaking as far as their interests are concerned. And, as shown by the record, and as within our common knowledge, there is at the present time a shortage of men who may be devoted to such task by the respondent carriers, public authorities, including this Commission, and by shippers and their organizations. This latter condition is a direct consequence of the withdrawal of such experts from their former employment for active participation in the war.

We find, however, that in the circumstances it is possible and practicable to make certain readjustments in the existing basis of class

rates, predicated upon the continued application of the existing classifications, which will be just and reasonable, which will have the effect of bringing to the minimum the preferences and prejudices which we have found to be unlawful, as completely as it is practicable now to eliminate such violations. This finding is based upon the peculiar circumstances of the present time, largely the result of the war, and because time will be needed to effectuate a classification revision and application of a scale or scales of class rates as our findings in part I and part II hereof contemplate. The adoption of the simple and direct method of rate revision which we are about to outline will conserve time, and will obviate many tariff publishing difficulties without complete revision of the classifications before us and the determination and prescription of new scales of rates based thereon.

Our general conclusions and findings heretofore made have emphasized the importance and desirability of bringing the several intraterritorial freight-rate structures under consideration closer together in level and more upon the same pattern or scheme. We have also emphasized the importance and desirability of removing as many differences as possible between the interterritorial rates of the respondents and the intraterritorial rates which they maintain. The basis which we shall now outline is in harmony with that objective, and will approach, as a preliminary step, the uniformity of class rate structure which we have previously found will be just, fair, and reasonable.

We find and determine that the basis hereinafter outlined will result in rates which, until a complete revision in harmony with our previous findings is possible, will be just and reasonable.

We find and determine that on and after the effective date of the order to be entered herein, the existing and current interstate class rates applicable to freight traffic moving at the classification ratings within southern, southwestern, and western trunk-line territories as those territories have heretofore been described in this report, and interterritorially between those territories, and also between those territories and official territory, as hereinbefore described, will be unjust and unreasonable unless reduced 10 percent, subject to the class 1 scale shown at the end of this paragraph as minima for class 1 rates, and subject to the qualifications hereinafter indicated. This reduction is to be made by using the present current applicable class 1 rates as a base, and reducing them 10 percent, subject to observance of the rates in the distance scale set out hereinafter as minima. The rates on all the other classes in each class-rate system are to be correspondingly reduced by observing the same percentage relations to the class 1 rates thus reduced that such classes bear to the currently applied class 1 rates. No changes in existing exception rates or column rates

are contemplated by this finding. No increase in any existing class rates is to be made under this finding within the southern, southwestern, and western trunk-line territories, and interterritorially between those territories, and also between those territories and official territory. In determining resulting rates, fractions of a cent should be disposed of by dropping those of less than one-half cent and by increasing those of one-half cent or more to the next whole cent. We do not contemplate that groupings in connection with the present class rates shall be changed as a result of this finding. In applying the scale of minimum rates, the distances between groups or blocks of stations upon which the present class rates are based are to be observed, rather than the actual distances to or from such station, when differing therefrom.

Table of minimum class 1 (class 100) rates

Miles	Cents	Miles	Cents	Miles	Cents	Miles	Cents	Miles	Cents
5	40	160	82	580	152	1,150	234	1,775	311
10	43	170	84	600	155	1,175	237	1,800	313
15	46	180	86	620	158	1,200	240	1,825	316
20	48	190	88	640	161	1,225	244	1,850	319
25	50	200	90	660	164	1,250	247	1,875	322
30	52	210	92	680	167	1,275	250	1,900	324
35	54	220	94	700	170	1,300	253	1,925	327
40	56	230	96	720	173	1,325	257	1,950	330
45	58	240	98	740	176	1,350	260	1,975	332
50	60	250	102	760	179	1,375	263	2,000	334
55	61	260	106	780	182	1,400	266	2,025	337
60	62	300	110	800	185	1,425	269	2,050	340
65	63	320	113	825	189	1,450	272	2,075	342
70	64	340	116	850	193	1,475	275	2,100	344
75	65	360	119	875	196	1,500	278	2,125	347
80	66	380	122	900	199	1,525	281	2,150	349
85	67	400	125	925	203	1,550	284	2,175	351
90	68	420	128	950	207	1,575	287	2,200	353
95	69	440	131	975	210	1,600	290	2,250	357
100	70	460	134	1,000	213	1,625	293	2,300	361
110	72	480	137	1,025	217	1,650	296	2,350	365
120	74	500	140	1,050	221	1,675	299	2,400	368
130	76	520	143	1,075	224	1,700	302	2,450	372
140	78	540	146	1,100	227	1,725	305	2,500	375
150	80	560	149	1,125	231	1,750	308		

We find and determine that simultaneously as a part of the adjustment hereinbefore outlined, the existing applicable interstate class rates for freight traffic moving at classification ratings within official territory (including Illinois territory) should be increased 10 percent as maximum scales, superseding the intraterritorial official class-rate scale heretofore prescribed or authorized by us, subject to the qualifications hereinafter indicated, and that as so increased those scales will be just and reasonable as maxima. The increase of maximum class rates applicable within official territory is to be made by using the present current applicable class 1 rates as a base, and increasing them 10 percent. The rates on the other classes should be correspondingly increased by observing the same percentage relations to the maximum class 1 rates as thus increased that such classes bear to the currently

applied class 1 rates. No changes in existing exception rates or column rates are contemplated by this finding. The same provision with respect to disposition of fractions of a cent, as to groupings, and as to the ascertainment of distance hereinbefore stated with respect to the reductions within and between other territories and between those territories and official territory, shall in like manner apply to the increases in the maximum class-rate scales within official territory herein found to be just and reasonable. This finding as to the justness and reasonableness of the intraterritorial official class rates is based in part upon a consideration of the returns from operation of the various respondents in the several territories as reported to us, which we have considered pursuant to stipulations of record. From those returns and the whole record we find and determine that the revenue needs of the carriers in official territory with respect to their class-rate traffic are greater than is the case as to the class-rate traffic of the carriers in the other territories described.

The respondents maintain flat minimum charges for each less-than-carload shipment which may be and sometimes are stated and embodied in a rule of the governing freight classifications, and in other instances in varying measure are published in freight tariffs of the respondents or in exceptions to the classifications. The minimum charge provided by the various classifications is uniformly 55 cents. While this proceeding of investigation does not extend to rules of the classification, the minimum charge stated therein is in the nature of a rate, and is so published as a matter of convenience. We therefore find and determine that the minimum charge upon class-rate shipments in the territory included in No. 28300 is within the scope of this investigation.

From the record we find and determine that in many instances when commodities transported take class rates, the respondents have extended the service of picking up and delivering shipments and perform such service under the applicable class-rate charge without additional charge therefor. We also find and determine that such pick-up and delivery service has been extended in scope largely since our findings and orders in the various proceedings hereinbefore recited which prescribed or approved the class rates in issue in this proceeding. We find and determine from the evidence of record in this proceeding, that when such service is performed the applicable class rate with the existing minimum charge as stated does not yield the out-of-pocket costs incident to the transportation service which it purports to cover. We further find that to the extent the minimum charge per shipment is less than 75 cents, it is below a just and reasonable minimum rate and charge. Upon the record as it stands, and predicated upon the adjustments for the interim period herein-

before found to be just and reasonable, we determine and find that the minimum charge per shipment, whether pick-up and delivery service is afforded or not, whenever such charge is below 75 cents, is below the minimum of a just and reasonable rate and charge and that 75 cents is and will be a just and reasonable minimum charge to be made.

The foregoing findings and determinations are made as of the date when the order to be entered herein becomes effective. Inasmuch as these proceedings will necessarily be held open upon our docket, and as our power to suspend, modify, or set aside our orders is recognized by the act, we do not now prescribe a specified period of time during which these findings as to the interim adjustment shall continue in force, but make them as continuing until our further order.

In certain States the applicable intrastate class rates are held to a basis prescribed by us in orders entered in proceedings under section 13 (3) and (4) of the act. No especial consideration has been given to such intrastate rates in this proceeding. If any modification of our outstanding orders seems necessary, it should be sought by appropriate action as contemplated by our general rules of practice.

Our outstanding orders will be modified to the extent necessary to enable the carriers which are bound thereby to publish and file schedules embodying such increases and decreases; and authority will be given by appropriate order under section 6 of the act for the publication of simple forms of supplements to existing schedules to effectuate such increases and decreases. If carriers need relief under the provisions of section 4 of the act, we will give prompt consideration to applications therefor.

During the pendency of this proceeding the membership of the cooperating committee of State commissioners was changed by the withdrawal of Commissioners McConnaughey, of Ohio, and Murphy, of South Dakota, upon their retirement from their respective State commissions. Commissioner Doherty was assigned to replace Commissioner Murphy, and he and Commissioner Scott heard the argument. After the argument, Commissioner McConnaughey retired and was succeeded, in the spring of 1945, by Commissioner Meins, of Massachusetts. Copies of this report have been studied by all three of these cooperating commissioners, and we are authorized to say on their behalf that Commissioners Doherty and Scott agree with the conclusions and that Commissioner Meins agrees only in part.[12]

An appropriate order will be entered.

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[12] The position of Commissioner Meins of Massachusetts is more fully set out in this footnote as follows:

"There are certain conclusions of the majority decision in which I do not concur.

"While I do not disagree that in many respects the accomplishment of a uniform classification on nation-wide basis would eventually be desirable, I do not believe that it

COMMISSIONER JOHNSON participated in the disposition of this proceeding.

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can be accomplished immediately, and that it is unreasonable at this time when the country is engaged in armed conflict with foreign powers to attempt to arrive at a national uniform classification. In the main I agree on this question with the comment of COMMISSIONER MAHAFFIE in his separate opinion at paragraph three (3).

"I believe the accomplishment of a uniform nation-wide classification, if eventually possible, should be accomplished with the least possible violence to the now-existing rate structure established by means of the territorial classifications. For many years rates based on the existing classification area groupings have been accepted by the Commission, and it seems to me that changes in the rate structure in the various territories in the first instance, at least, can best be handled by the railroad classification committees in the various territories with their intimate knowledge of the various factors contributing to the flow of traffic in their respective groupings. The knowledge in possession of these classification committees by long experience should not be arbitrarily cast aside as they are familiar with the needs of the shippers and the public. Although uniform classification eventually may be desirable, I do not think it follows from the evidence in the case, nor is it prudent in the public interest at the present time, for the Commission to reverse the essence of its previous findings by declaring that present class rates are now, or rates in the future based on territorial divisions will be, of themselves unlawful or discriminatory.

"It seems to be unreasonable with the United States at war to expect the carriers in the several rate territories to bring about immediate agreement of a nation-wide uniform classification.

"The order of the Commission relative to *ad interim* adjustment revising the rates downward in the southern and western territories based upon evidence of cost of operation in the record in these territories may be justified, but to order arbitrarily an increase in class rates in the so-called official territory when no such increase of rates is requested by the carriers of that territory, at least in this proceeding, seems to me an unwarranted and unjustifiable burden to place upon the intraterritorial shippers in the largest industrial and manufacturing area of the country.

"If present classifications are unlawful (in which I do not concur) then the arbitrary percentage adjustments during any *ad interim* period must be equally unlawful.

"It would appear from the record that one of the purposes of national uniform classification in rates was the expectation that there would be a reduction in the aggregate number of 'commodity' and 'exception' or column rates now in effect to a great degree in the southern and western territories. The reduction recommended by the Commission in these territories in class rates I doubt would be sufficient to eliminate the majority of such existing 'exceptions', and if the minimizing of such exceptions in the various territories is a desirable goal, certainly the increase of class levels in official territory would obviously tend to increase the amount of traffic which will move in the future in official territory on 'commodity' and 'exception' rates.

"I do not believe that there is a preponderance of evidence in the record sufficient for the Commission to find that the grouping of rates in the present territorial areas are of necessity unlawful or discriminatory insofar as the difference of scale of classification in each area is concerned.

"I believe, however, that the various carriers should be directed to work toward eventual uniform classifications on a nation-wide basis if possible and allowed a reasonable period after the cessation of hostilities for the various economic adjustments which inevitably will manifest themselves after the close of the war.

"I am of the opinion that a nation-wide uniform classification is only a part of a properly balanced fair and equitable system of nation-wide carriers' tariffs and in any such uniform nation-wide system the adjustment of 'commodity' and 'exception' rates is a matter which requires exhaustive study, particularly if the goal is for the hope of moving the bulk of traffic in any nation-wide class-rate structure. It is my understanding that 'commodity' rates and 'exception' rates are not subject to these proceedings which is a further reason for my disagreement with the findings of the Commission in ordering immediate nation-wide reclassification.

"The Commission's decision for nation-wide immediate reclassification comes at a time when the minds of the industrial leaders—manufacturers, producers, and shippers, as well as carriers—are bending every effort to win the war, and the attempt to bring about a peacetime revision of rate structures could well have been deferred until final victory is an accomplished fact."

MAHAFFIE, *Commissioner*, concurring in part:

The attempt to bring about uniformity in classification seems to me worth while. The effort has not been very successful up to this time but I think it should be continued. Hence I concur generally in that portion of the report which deals with Docket No. 28310. I do not agree with the findings made therein under section 3 of the act.

I also concur in the *ad interim* adjustment. The relative earnings and operating ratios of the carriers in the different districts at this time afford an opportunity more nearly to equalize rates. It appears not unlikely that before very long it may be necessary to increase freight rates in order to maintain adequate service. A horizontal increase necessarily disregards discrepancies in the earnings of individual carriers and almost equally of different groups and districts. Percentage increases accentuate differences in rate levels. The adjustment now prescribed as temporary will help to harmonize the rate levels in the different territories so far as is practicable on the basis of the present earnings. In addition it has the advantage that it can probably be put into effect without a long period of waiting and without further litigation. It can also readily be modified if changed conditions make modification desirable.

With that portion of the report which requires a permanent readjustment of class rates I do not agree. As to what I consider its defects I am in accord, in the main, with COMMISSIONER PORTER'S comments in his dissent herein. In a country so vast as this with its widely varied resources and differing transportation needs it seems to me a mistake to try to compel general equality in rates except to the extent equality is justified by transportation conditions. I think the effort to do so must necessarily fail. But I am afraid the process of finding out whether it can be done will be painful and costly. The prejudice findings on which the new adjustment is largely predicated are calculated, if carried to a logical conclusion, to lead to a rigid rate structure based on mileage. While this may seem on its face to be equitable its accomplishment would entail radical industrial and agricultural readjustments. I doubt if the country should be required to incur the expense of making them.

PATTERSON, *Commissioner*, concurring in part:

I agree with much of what COMMISSIONER PORTER has to say in criticism of the majority report, but not with his conclusions. It is my view that there should be an "*ad interim* class rate revision" in connection with which an increase in official territory class rates, as contemplated by the majority report, should be tentatively approved, subject to protest and suspension, but that such increase may not be required. I find no justification for the action of the majority

in entering a minimum-rate order, I concur in the view that the intraterritorial class rates in other territories, and the interterritorial class rates, are unreasonable to the extent found and should be required to be reduced as part of the *ad interim* revision. I do not, however, regard the revenues of the carriers serving these territories as excessive and, in my opinion, the reductions should not be made effective until the carriers have had an opportunity to propose and put into effect such revision of rates on other than class traffic as may be necessary to recoup the losses in revenue resulting directly or indirectly from the reductions in the class rates.

I do not subscribe to the "Ultimate Findings" of the majority. In my opinion any attempt to prescribe the rates to apply in connection with a uniform classification which is not yet in existence is premature. Orderly procedure requires, as the first step, the working out of uniform classification ratings. After this is done there should be a revision of the class rates for application in connection with the revised ratings, which should be on such a level as to move a substantially greater volume of traffic than do the present class rates, and which also should have due regard for differences in transportation conditions, the consist of the traffic, and the revenue needs of the carriers, in the different sections of the country.

PORTER, *Commissioner*, dissenting:

I favor bringing together much more closely than they are now the respective class-rate structures of the country. But I am forced to dissent from the majority report, first, because of its one-sided and inadequate statement of a number of the important facts; second, because the class-rate uniformity called for by the findings of the majority, under which the same set of class rates is to be applied throughout the country from Portland, Maine, to El Paso, Tex., and from Bismarck, N. Dak., to Miami, Fla., and the manner in which it is to be accomplished, not only are without adequate support upon the record and ignore the standards of rate-making consistently followed by this Commission throughout its 58-year history, but in my opinion ignore and are contrary to the best interests of the shipping public, as well as of the railroads, in each of the territories affected; and third, because the interim steps in rate changes contemplated by the majority fall below the relief to which the southern and western shippers are presently entitled. A permanent rate basis need not await a uniform classification, which in my opinion will not be realized for at least another 10 years, but can and should be established now. My reasons in greater detail will be found below.

The principal findings of the majority are divided into two categories; those relating to a permanent adjustment of the classifications

and class rates here in issue and those relating to a so-called temporary or interim adjustment. The findings having to do with the permanent adjustment, made under sections 1 and 3 of the act, contemplate:

1. A uniform classification throughout the country, based on the official classification, with intermediate and additional classes added.

2. A uniform scale of class rates throughout the portion of the country east of the Rocky Mountains, which is to approximate 115 percent of the basic scale of first-class rates prescribed in the eastern revision as increased by the general increases of 1938.

3. Percentage relations of classes other than first class to the first-class rates on the basis of those in official territory.

The findings dealing with the so-called temporary or interim adjustment, made under section 1, contemplate:

1. A reduction of 10 percent in the existing interstate class rates within southern, southwestern, and western trunk-line territories, and interterritorially, subject to a distance scale of class rates, which is about 115 percent of the eastern scale, as minima.

2. An increase of 10 percent in the existing interstate class rates within official territory.

3. The new intraterritorial and interterritorial class rates to be governed by the existing classifications and in the manner now provided for.

The interim adjustment is to continue in force until a uniform classification is prepared, preferably by the respondents with the assistance of the shipping public and rate-making authorities of the States, and the prescribed uniform class rates and the uniform classification are to become effective simultaneously at some future date.

Because of the magnitude of the issues in these proceedings and the importance to the shipping public and the railroads of the findings made, I consider it necessary to discuss the report and the findings in some detail:

Uniform classification.—I agree in principle with the finding that a uniform classification would be just and reasonable. From its inception the Commission has favored and encouraged the carriers in classification uniformity. But despite that encouragement, which has at times reached the point of insistence, approximately 40 percent of the more than 20,000 ratings in the respective classifications have not been unified. Now, suddenly, in the midst of a world war, when the railroads, the shippers, and the regulating bodies have been drained of manpower which could be made available for the purpose without hurting the war effort, the majority demand prompt revamping of nearly half of the total classification ratings affecting many thousands of important articles, among which are the most controversial and difficult in the art of commodity classification. If the war effort is not

to be retarded, as of course it should not be, and if the uniform classification thus demanded of the carriers is to be just and reasonable as the law requires, we might as well face the truth that the difficult job of classification uniformity cannot be completed for many years to come. Anyone reasonably familiar with the principles of classification could tear to pieces the present classifications and compile one in which the ratings in the respective territories were uniform, and upon order from the Commission the carriers might even establish such a paper classification, but that would not bring about the use of uniform rates in actual transportation. There is room for some doubt whether uniform classification on all articles of transportation will ever be practicable, but certainly any such classification hurriedly put together will simply precipitate a multitude of additional classification exceptions and commodity rates, and a flock of complaints to this Commission, the net result of which will be defeat of the principal objective sought, namely, uniformity in transportation charges for like services under similar conditions in all of the territories concerned at the earliest practicable date.

In bringing about classification uniformity on the great bulk of the articles concerned, I know of no practicable substitute for the customary methods employed by the classification committees of the railroads themselves, who alone have, or can obtain with reasonable promptness, the mass of data which must be considered before intelligent action can be taken. Those committees should be streamlined for more prompt and more cooperative effort, supplemented where the need arises by representatives of this Commission and of the State regulatory bodies. But even if or when that is done, and if classification uniformity, so far as may be practicable, is eventually accomplished, it is more than likely that the number of classification exceptions and special commodity rates will be at least as great as now and that the proportion of the total rail traffic which will move on the uniform classification basis will be at least no greater than it is today.

For the foregoing reasons, and looking at the problems before us from a practical standpoint, while I agree that classification uniformity is a worthy objective which should be attained so far as the law demands at the earliest practicable date, I cannot believe that it will have much effect on rate uniformity. Accordingly, I see no sufficient reason for withholding a permanent class-rate adjustment until the establishment of a uniform classification, which, as stated, is many years off and may never reach complete fruition.

As I read the record, there is no greater merit in the official classification than there is in any of the others, and I am not in accord, therefore, with the finding of the majority that "the pattern of the official classification is the one which best comports with the requirements of the

statute that the individual and joint classifications shall be just, fair, and reasonable, for application uniformly throughout the country." The testimony of the classification committees, who know more about it than anyone else, is that the respective classifications have been made to fit the conditions of the respective territories, and the witnesses for those committees introduced voluminous evidence in refutation of the opinions expressed by the proponents of uniformity that the official classification is superior to the others. As the record now stands, there is no evidence dealing with any individual rating and therefore no support for any change in a single rating. The "pattern" of the official classification thus laid down by the majority seems to me worse than no pattern at all.

Uniform class rates.—In my opinion, the record falls far short of supporting the finding that to be just and reasonable, and free from undue prejudice and preference, the class rates throughout the area east of the Rocky Mountains must be placed in the strait-jacket of a uniform distance scale. Even the report does not warrant such a conclusion, and it seems the majority could not quite bring themselves to make the direct finding that the class rates are and will be unlawful where and to the extent that they depart from such a scale. Nevertheless, that is the net result of the findings made, and with that result I am not in accord.

Throughout the history of its regulation, the Commission has consistently recognized, what is still the fact, namely, that conditions in the various rate territories differ with respect to the volume and kind of traffic transported, the distribution of the rate burden, and the revenue needs of the railroads. These and other factors have resulted in the maintenance of different rate territories, the boundaries of which have been determined largely by the basic fact that, in general, the rails of the carriers within the respective territories do not extend beyond their borders, and in the establishment of different rate levels within those territories. In the proceedings wherein these levels were recently prescribed, we recognized that the volume of high-grade traffic was much greater and the articles included therein of much higher value in official territory than in the other territories; and that the volume of other than class-rate traffic, excluding coal, in comparison with the total traffic, was much greater, and the articles included in the other traffic of lower grade, in the other territories than in official territory. Because of these differing conditions, and the further fact that relatively lower rates were maintained on raw materials and basic commodities within the other territories than in official, we prescribed higher class-rate levels in southern, southwestern, and western trunk-line territories than in official territory.

Since the decisions in which those prescriptions were made, the situation as to volume and kind of traffic transported in the various territories has not changed, except in degree. The principal change has been in official territory where a smaller proportion of the total traffic now moves at the rates in issue. Nevertheless, according to an exhibit of record, in official territory 23.4 percent of the total traffic still moves at class rates and at exception rates which are related by percentages to the class rates, and 76.6 percent at commodity rates, as compared with only 7.8 percent at class or exception rates and 92.2 percent at commodity rates in southern territory, 0.8 and 99.2 percent, respectively, in western trunk-line territory, and 6.8 and 93.2 percent in southwestern territory.

Articles in the manufactures and miscellaneous, and products of mines groups are usually considered the most remunerative to the railroads, and those in the products of agriculture, animals and products, and products of forests groups less remunerative. In 1939, a representative year, commodities in the first two groups accounted for 87.63 percent of the total tons of carload freight carried, and 76.26 percent of the total carload revenue for class I railroads in the eastern district. Comparable figures for the southern region are 73.60 percent and 58.31 percent, respectively, and for the western district, 66.02 and 53.92 percent. Shipments in the products of agriculture, animals and products, and products of forests groups represented 10.64 percent of the total tons of carload freight carried and 14.29 percent of the total carload revenue for class I railroads in the eastern district, 23.65 percent of the tons and 30.69 percent of the revenue in the southern region, and 32.47 and 39.31 percent, respectively, in the western district.

Two classes of traffic, namely, coal and coke and iron and steel articles, move in much greater volume, constitute a far greater proportion of the total tonnage of freight handled, and provide absolutely and relatively a much larger amount of revenue in official territory than in the South. In 1939, approximately 95 percent of the coal and coke production of the country originated east of the Mississippi River, divided, official territory, including the Pocahontas region, 82.23 percent and southern territory, 12.9 percent. Excluding New England, in which there is no coal production but which imports a vast quantity, and the Pocahontas region, the coal and coke tonnage originated in official territory was 46.19 percent of the United States total. Coal and coke traffic is economical and profitable to handle. The coal traffic is more diffused and is more evenly shared by the major eastern railroads than by those in the South, where it is largely confined to four railroads, Louisville & Nashville, Southern, Illinois Central, and Clinchfield.

Official territory railroads handled 481 million tons of freight other than coal and coke in 1939, as compared with 143 million tons transported by southern railroads. Included in the former figure was a large volume of iron and steel traffic far in excess of the tonnage of like articles in southern territory. Thus, the ratios of the tonnage in iron and steel articles to the total freight tonnage handled, and of the revenue received from iron and steel tonnage to the total revenue from all freight, for the central-eastern and Great Lakes regions, which roughly constitute official territory other than the New England and Pocahontas regions, were, respectively, 15.32 and 14.66 percent, as compared with only 5.11 and 5.02 percent for the southern region. So also, the tonnage of iron and steel articles originated was 20.91 percent in the portion of official territory described and only 3.92 percent in the southern region. In 1940, 83.86 percent of the rail tonnage of iron and steel articles of the country originated in official territory, excluding New England and the Pocahontas region, as compared with only 6.65 percent in the South. The primary reason for this difference in tonnage lies in the natural advantage which accrues to the large official territory steel mills because of their location near great deposits of coal and on or close to the Great Lakes where cheap transportation of iron ore by water and, if need be, short rail hauls beyond are available. The cars used to transport ore from lake ports to the interior mills are afforded return loads by the large quantities of cargo coal moving to those ports. Moreover, the greatest consuming markets for manufactured iron and steel are in official territory.

Thus, coal, coke, and iron and steel tonnage provide official territory railroads with large sources of revenue which are available only in small degree to southern railroads. This fact affects, and in my opinion should affect, both the principles underlying the making of the northern and southern rate structures and the levels of the rates provided for class-rate traffic.

In the movement of low-grade, heavy-loading freight the situation is quite different from that portrayed above. The relative importance of the movement of two groups of low-grade commodities in 1939 for the southern region and the central-eastern and Great Lakes regions is shown in the following table. Group 1 comprises sand and gravel, broken and ground stone, phosphate rock, furnace slag, iron ore, fuel wood, pulpwood, logs, posts, poles and piling, and common brick, all of which are among the lowest-grade commodities transported. Group 2 consists mainly of manufactured goods in the category of low-grade tonnage and includes lumber, shingles and laths, box, crate, and cooperage material, built-up wood, railroad ties, products of forests, products of mines, brick, building tile, common lime, cement, fertilizers, cottonseed, crude petroleum, and asphalt.

	Commodities	Southern region	Central eastern and Great Lakes regions
Percentage tonnage handled to total tonnage all freight:	(Group 1	[1] 21.32	[1] 5.01
	(Group 2	19.48	18.64
Total			
Percentage freight revenue to total freight revenue:	(Group 1	[2] 49.80	[2] 23.74
	(Group 2	6.63	1.70
		15.01	11.43
Total		[2] 21.64	[2] 13.13

[1] Excludes iron ore.
[2] Excludes coal and coke.

In 1941, the western district class I railroads operated in freight service 56.45 percent of the 230,094 miles operated in the country. But they originated only 36.98 percent of the total tons of carload traffic originated in the United States, excluding the Pocahontas region. The eastern roads operated 24.50 percent of the total mileage, but originated 47.40 percent of the total originated carload traffic, excluding the Pocahontas region.

An analysis of the composition of the traffic originated in these two districts shows an even greater contrast. In 1941, the western railroads originated 68.82 percent of the total agricultural products originated in the country, as compared with 20.88 percent by carriers in the eastern district, but the volume of the products of agriculture originated in the West is only 6.33 percent of the total of all carload traffic originated in the country. In that year, the western roads originated 28.06 percent of manufactures and miscellaneous tonnage, as compared with 60.66 percent by the eastern carriers. The eastern roads' share of manufactures and miscellaneous is almost three times the tonnage of agricultural products of the western roads, and thus the eastern roads' preponderance of high-grade traffic affords a much greater source of revenue to them than do the products of agriculture to the western carriers.

In the same year, the western roads originated 63.03 percent of the total tons of animals and products originated in the country, and the eastern roads only 28.51 percent, but here again the western tonnage is less than 1 percent of the total of all carload traffic in the country. The Commission has found that livestock as a commodity which cannot be expected to do more than pay its own way. *Livestock—Western District Rates*, 176 I. C. C. 1, 83, so there can be little profit in that kind of traffic.

In 1941, western roads originated 58.73 percent of the total tons of forest products and the eastern roads 7.52 percent. The western tonnage is 3.80 percent of the United States total. Here again, this group of commodities is subject to freight rates which are not in the higher brackets. The tonnage of products of mines originated by the

western roads was 33.31 percent of the total, as compared with 49.85 percent for the eastern roads, and was 17.47 percent of the United States total as compared with 26.14 percent for the eastern district. The western figures include iron ore, which is mined almost solely in Minnesota and is hauled for relatively short distances to Lake Superior docks.

The 13 western trunk-line and southwestern States originated a total of 258,735,397 tons of all carload freight, as contrasted with 199,140,599 tons of manufactures and miscellaneous alone originated in the eastern district.

During the period from 1921 to 1941 the revenue ton-miles per mile of line (traffic density) of the eastern railroads were more than twice, and in some years three times, those of the western roads. In 1921, the former's density was 2,357,040 and that of the latter 829,858. In 1941, corresponding figures were 3,392,964 and 1,358,041, respectively.

From the foregoing it is plain that the consist of the traffic is vastly different in official territory than it is in either southern or western territory, and that the chief difference lies in the much larger proportion and volume of the high-grade and more remunerative traffic in official than in either of the other territories. Alongside that very important fact there should be placed another, which the southern and western interests should realize is of great importance to them, namely, that on many raw or basic materials vital to the life of the South and the West, and which generally move on commodity rates, the rates in the South and the West are on a lower level than in the East. Using the South for illustration, the rates are now lower than in the East on such commodities as pig iron, pulpwood, logs, lumber, scrap iron, brick, lime, sand, gravel, crushed stone, fertilizer, and sulphuric acid. These important facts mean that the eastern roads by reason of their large volume of the more profitable traffic can render adequate service to the public with a lower rate level on other traffic, such as class-rate traffic, than can the southern and western roads. They mean also that if, as the majority here insist, that natural advantage is to be taken away from them and the class rates are to be made uniform in all of the territories east of the Rocky Mountains by increasing the eastern class rates by about 15 percent and reducing those in the other territories to that level, the ultimate result will be either that the eastern roads will make unreasonably large profits, which through divisions of the interterritorial rates they will be expected to share liberally with the southern and the western roads, and the official territory shippers and consumers will be called upon to help carry the burden thus thrust upon them by the relatively low rates on raw materials in the South and the West, or the latter rates, as well as a number of other exception and com-

modity rates in the West and the South, will have to be increased so as to provide the southern and western roads with sufficient revenue to enable them to continue to render adequate service to the public. To say, as do a number of the parties advocating uniformity, and as in effect does the majority report, that exception and commodity rates are not here involved and are not to be affected by what is done here, is simply playing the proverbial ostrich and should deceive no one.

One is required to guess from the text of the report the reasons which impelled the majority to prescribe a uniform scale of rates throughout this area, because the basis or bases for this finding are not clearly stated. The emphasis placed upon it in the report indicates that the cost evidence is the principal basis for the finding. It seems important, therefore, to discuss briefly the cost studies and the weight which should be accorded them.

The cost evidence was prepared by members of our staff. It does not even purport to reflect the actual or relative costs of transporting class-rate traffic in the different rate territories. The territorial cost comparisons were based on the cost of furnishing a given amount of transportation service in certain territories selected by our cost section on traffic handled in different types of equipment, such as box, gondola, tank, stock, flat, or refrigerator cars. Class-rate traffic is not transported exclusively in any type of equipment, and although a substantial quantity is moved in boxcars, the volume of class-rate traffic transported in boxcars is much less than the volume of traffic transported in that type of equipment at exception or commodity rates. It is thus clear that the cost evidence does not afford a basis for a finding of the actual or relative costs of class-rate traffic in the various territories.

The report does not show, except in nebulous fashion, that the cost figures represent apportionment of totals, based on estimates; that they involve many assumptions and acts of judgment; and are not computations from direct, original cost figures for particular movements. These, however, are the facts. It omits evidence showing that 59 out of 117 items of basic data used in the studies were estimated, and that 458 out of 500 sequences were wholly or partly estimated. It fails to disclose clearly that when making the studies it was assumed that the consist of the traffic is the same in the different territories, when the fact is, as I have pointed out, that the traffic consist differs widely in the respective territories. The result is that theoretical costs are produced, based upon assumptions which are not facts, and upon comparisons of unlike things.

Moreover, the territorial subdivisions shown in the report in connection with the cost study do not reflect accurately the class-rate ad-

justments in the several rate territories. For example, the basic eastern scale does not apply in New England, and the basic southern scale does not apply in the Florida peninsula, but the basic eastern scale does apply in the Pocahontas region. The report does not contain any comparison of costs in official territory, including the Pocahontas region but excluding New England, with southern territory, excluding the Florida peninsula. Likewise, the territorial comparisons on which reliance is placed are for the western district as a whole, including mountain-Pacific territory. The latter territory is outside the scope of the class-rate proceeding and its rates are on a higher level than in western trunk-line and southwestern territories.

Among the incongruous results revealed by the cost study are that bituminous coal earns only 70 percent in the western district, only 72 percent in the southern region, and only 81 percent in the eastern district of "fully distributed costs," although it is a well-known fact that the heavy coal-carrying roads have always been the most prosperous; that iron and steel articles produce 99 percent of cost in the East as against 244 percent in the South, although on much of the iron and steel traffic the level of the rates in both territories is about the same; and that passenger automobiles earn 111 percent of cost in the East, 117 percent in the West, and 157 percent in the South, in the face of the fact that we have just concluded a lengthy nation-wide investigation of the rates on automobiles, in which it was shown that numerous rates on that commodity have been greatly reduced to meet motor-carrier competition and there is much reason to believe that many of them are so low as to cast a burden on other traffic. Either this Commission has been grossly misinformed by dozens of sworn witnesses in the last half century, or this cost study is practically worthless for the purpose of fixing rates. I do not mean to say that it is not the best that can be produced at this stage of the science of cost-finding, but I do mean to say that it is so full of estimates and assumptions that even if it purported to show the cost of transporting class-rate traffic, which it does not, it would be unsafe to base the prescription of class rates or class-rate relations upon it.

Aside from serving as a guide in fixing minimum rates, it seems to me the sensible policy toward the use of cost studies in rate making, now as then, is that set forth by the Commission in *Switching at St. Louis and East St. Louis*, 120 I. C. C. 216, where at page 220 we said:

> A cost study is ordinarily little more than a very rough indication, and even if unusually comprehensive and exact, it should not be the sole basis for fixing rates. The value of the service to the shipper and many practical considerations may be of equal or greater importance.

"But," say the majority, in effect, "we are not here basing the actual rates on cost, but are using cost to fix the rate relations between the

respective territories." That is a dangerous policy, which is likely to plague this Commission for years to come, for it is perfectly plain that if a general cost study such as the one upon this record can be and is used as the vehicle for forcing uniformity in class rates, the same study can and probably should be used as an excuse for forcing uniformity in all rates, exception and commodity rates included. Certain it is that the study has no more merit for the fixing of class rates or class-rate relations than it has for the fixing of rates or relations on exception or commodity traffic. Would uniformity on all traffic be in the interest of the South with its relatively low rates on raw materials, or of the West with its relatively low rates on products of agriculture, including Idaho potatoes? I fear not. But on the theory of this report, and whether we like it or not, that is the direction in which we are now drifting.

The majority find that uniformity should be accomplished, among other steps, by increasing the class rates in official territory by 10 percent, to be changed later to about 15 percent, and as a basis for that finding they further find that the existing intraterritorial rates in official territory are unjust and unreasonable under section 1 (4) and (5) (a) of the act, and in their relation to the interterritorial rates are unduly preferential of official territory and its shippers and receivers of freight, and unduly prejudicial against the other territories and shippers and receivers therein located, in violation of section 3 (1). Aside from the cost study, which as stated is utterly inadequate for the purpose, the record embodies not one word of evidence in support of the finding that the official territory rates are unjust or unreasonable under section 1, and even the cost study indicates that carload traffic in the East is being handled at a profit. Excepting only the motor carriers, who are seeking an opportunity to increase their own rates, and testimony offered in their behalf, not a single party to this proceeding has gone on record as favoring an increase in the eastern rates and none of the evidence was directed toward that end.

So far as undue prejudice and preference under section 3 is concerned, this Commission has long taken the position, and it has been sustained by the courts, that in order to support a finding under that section there must be a clear indication of injury to the prejudiced party or parties. *Barrett Co.* v. *Atchison, T. & S. F. Ry. Co.*, 172 I. C. C. 319, 333; *Bronstein* v. *Baltimore & O. R. Co.*, 215 I. C. C. 136, 141; *Hoffstot* v. *Monongahela Ry. Co.*, 248 I. C. C. 248, 253. Now, let us see what injury to southern and western shippers is shown on this record. The southern interests offered only nine shipper witnesses, and only three of them represented shippers whose products move on class rates here in issue. They are a manufacturer of washboards at

618612—45—No. 148——19

Raleigh, N. C., a manufacturer of macaroni products at Memphis, Tenn., and a manufacturer of wine at Atlanta, Ga. The Raleigh manufacturer's business has increased substantially in recent years, and about 25 percent of his shipments to official territory have been to Detroit, a short distance from Saginaw, Mich., where one of his chief competitors is located. Application of the eastern level of rates to his shipments to the North in a typical month would have reduced his freight charges by only 8 percent. The witness for the macaroni products manufacturer was not familiar with the basis on which macaroni products are sold, the volume of the shipper's traffic, the points to which shipments are made, or the rate of growth of the shipper's business. He had no knowledge of any injury by reason of the rate situation. The Atlanta manufacturer has a winery also at Brooklyn, N. Y., and does a nation-wide business. He recently constructed a larger plant at Atlanta and his business has made substantial progress.

Another southern witness had acquired a tannery at Andrews, N. C., about 4 months prior to the hearing. He had made no outbound shipments, but had received some shipments of green and dry hides from official territory. The green hides moved at rates not here in issue, as will also out-bound shipments of leather when made. The dry hides, consisting of five carloads, moved at fourth-class rates which, according to an exhibit, were 31.1 percent higher than if the entire movement had taken place in official territory. No explanation for his failure to purchase hides at southern points was made by the witness, except the statement that "there are very few southern hides produced." This explanation is not in accord with our findings in *Schoen Bros., Inc.* v. *Erie R. Co.*, 258 I. C. C. 161, wherein the Commission prescribed rates on green salted hides from points in southern territory to official territory destinations. Therein, page 162, it appears that in the representative year of 1941, 29,774 tons of hides were originated in southern territory. This witness stated that one of the main reasons for his location at Andrews instead of elsewhere was because he had available at that point "the necessary supplies with which to carry on our business," especially an ample supply of chestnut wood. Numerous tanneries have been operating for many years at various points throughout the South, including a number in the general area of Andrews. None of them has expressed to us any dissatisfaction with the class-rate adjustment, with the single exception of this witness, who, as stated, had been operating in the South for only a few months at the time of the hearing.

The western interests offered only three shipper witnesses, a steel manufacturer at Pueblo, Colo., who uses class rates to a very limited extent and did not advocate rate parity with official territory, a manufacturer of coal-washing machinery at Pittsburg, Kans., and a

manufacturer of lamps and stoves at Wichita, Kans. The last two now ship most of their products to official territory, and neither left any impression that he was hurt by the present adjustment.

So far as appears, the products of each one of the foregoing shippers using class rates move freely under such rates, and the evidence falls far short of demonstrating that shippers are injured by them to any appreciable degree.

But it is urged by the southern interests, and especially in behalf of the Southern Governors' Conference, that the industrial development of the South as a whole has been and will continue to be retarded, and therefore that the South as a territory has been and will continue to be injured, by the class-rate adjustment unless class-rate uniformity is brought about. The evidence is overwhelmingly to the contrary. The facts are that from 1929 to 1939, which is a representative period, the South made greater progress industrially and economically than any other section of the country. In that period the number of wage earners in manufacturing industries in the country declined 11 percent, in official territory 12 percent, but in the South there was an increase of 5 percent. The values of manufactured products for the country declined 21 percent, in official territory 25 percent, but in the South there was an increase of 1 percent. The number of wage earners in the canned fruit and vegetable industry increased 68 percent in the South, as compared with an increase of 28 percent in official territory. In the cotton industry the number of wage earners in 10 northern States decreased 45 percent, as compared with an increase of 12 percent in 6 southern States; the value of cotton products decreased 55 percent in the northern States and only 12 percent in the southern States, and the value added by manufacture decreased 48 percent in the North and increased 8 percent in the South. Similar data of record show like trends in the furniture industry, in the manufacture of heating and cooking apparatus, and in other industries. Only in the manufacture of a relatively few products, such as morticians' goods, certain flavoring extracts and sirups, and flour and grain-mill products, was the industrial trend during that period less favorable in the South than in the North. From 1930 to 1940 there was a greater decrease in agricultural employment in southern than in official territory, but manufacturing employment increased in the South and decreased in the North. In 1941, income payments for the United States were 111 percent of those in 1929, for official territory 100 percent, and for the South 128 percent.

Similar theories and arguments were advanced by Kentucky interests in *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.*, 213 I. C. C. 297. The Kentucky commission had prescribed intra-

state class rates on substantially the eastern level, and that level of rates was sought from Kentucky to official territory. The claims were that the rate structure complained of had hindered the development of industry and had disintegrated the State's social structure. In that proceeding we required the existing interterritorial class rates to be reduced to substantially the eastern level, and such rates became effective in 1935. What happened? The industrial trend in Kentucky between 1927 and 1939 was less favorable than in the remainder of the South. In 1939 the number of industrial establishments in Kentucky was only 88 percent of the number in 1927, as compared with 101.8 percent for the South as a whole; the number of wage earners was 84 percent in Kentucky and 108.7 percent in the South; the value of the products of such establishments was 108 and 113.2 percent, respectively; and the value added by manufacture was 95 and 102.1 percent. In 1940, 5 years after the revision of the Kentucky class rates, the traffic density of manufactures and miscellaneous freight in Tennessee, in which the higher southern class rates applied and now apply, exceeded that in Kentucky by 68.5 percent; and in 1937 the value of manufactured goods in Tennessee exceeded that in Kentucky by 40.2 percent.

An unbiased consideration of the foregoing data, together with others of similar import upon this record, can lead to but one conclusion, namely, that the class-rate adjustment here before us has had no appreciable effect, one way or the other, upon the industrial or economic development of the South or the West, and that not a single shipper, nor any particular class of shippers, nor any particular territory, has suffered injury by reason of that adjustment. Accordingly, I can find in this record no adequate support for the majority findings of undue prejudice and preference.

Moreover, it seems to me the majority reach a labored construction of our powers under section 3 (1) of the act as amended in 1940 by the addition of the words "region, district, territory." In my opinion, those words added nothing to our powers, which prior to that amendment were ample to permit us to remove undue prejudice against one region, district, or territory, and undue preference of another. Certainly there has been no change in the criteria, to one of which I have just referred, which have long been applied by us in determining whether undue prejudice or preference exists.

I have no difficulty in agreeing that the evidence does warrant a finding of unreasonableness of the intraterritorial rates within the South and the West, as well as of the interterritorial rates between the respective territories, and that they should be substantially reduced. In order to bring together the class-rate structures still more closely than would result under such a finding of unreasonableness, I favor

affording the eastern carriers the opportunity to make some increases in their class rates, but not by as much as 15 percent or even by 10 percent. To increase the eastern rates, especially on carload traffic, by either of the latter percentages will cast a heavy and unwarranted burden upon the official territory shippers of class-rate traffic. On a large proportion of the traffic which formerly moved, and normally should move, on class rates in official territory, exception or commodity rates have been established which are generally much below the class basis. The effect of what the majority require here, therefore, is to heap a further burden on those shippers, generally the small shippers, whose rates have never been reduced below the class basis, thus widening the advantage already enjoyed by those, mostly the large shippers, whose rates have been accorded special treatment. It may be confidently expected, if the eastern class rates are increased by 10 percent, and especially by 15 percent, either that much of the present class-rate traffic in official territory will be accorded exception or commodity rates on about the same level as the existing class rates, in which event the uniformity here aimed at will be largely destroyed, or that there will fall into the lap of this Commission a swarm of meritorious complaints against the resulting wholesale violations of the discrimination provisions of the act.

I would find that the present class rates in official territory, other than in New England and in Michigan zone C, are below a maximum reasonable level by about 6 percent, and that the existing class rates in the South and the West here in issue are unreasonable, (*a*) intraterritorially, to the extent that they exceed or may exceed the official territory rates as so increased by more than 10 percent in the southern region, except the Florida peninsula, and in western trunk-line zone I, and by more than 21 percent in western trunk-line zones II and III, in the Southwest, and in the Florida peninsula; and (*b*) interterritorially, between all territories, to the extent that they exceed or may exceed the resulting destination territory basis in each instance. The eastern scale, increased as above and sufficiently extended, should be straightened out so as to remove the irregularities caused by the general percentage increases of 1938, and the progression in its longer reaches should be slightly increased, before its use as a basis for the reasonable rates which would thus result. As so changed, the eastern rates would be little different from what they were until recently as a result of the general increases authorized in Ex Parte No. 148, *Increased Railway Rates, Fares, and Charges, 1942*, 248 I. C. C. 545, 258 I. C. C. 455. The eastern roads could be expected to establish such increased rates voluntarily, and no such violent disturbance of rate relations within official territory would result as must be expected under the basis prescribed in this report.

The foregoing reasonable bases, which in my opinion are the most favorable to the West and the South which the record supports, would result in greater reductions in the southern and western rates than will the interim basis prescribed by the majority, excepting only in western trunk-line zone I wherein the basis I propose would result in rates which on the average would be about as favorable as under the interim basis. Rates on these bases could and should be made effective permanently now. And in their establishment the time-honored principle that ordinarily an exception or a commodity rate must not exceed the corresponding class rate, should be observed. *C. Findeiss Sons Co.* v. *Pennsylvania R. Co.*, 241 I. C. C. 299. This principle is disregarded by the majority in their admonition that "no changes in existing exception rates or column rates are contemplated" by the interim findings. If that admonition is observed, there will be numerous exception or commodity rates in southern and western territories, and interterritorially which will be higher than the corresponding class rates, a condition which on its face is unduly prejudicial and preferential and should not be permitted, much less required, by this Commission.

As a matter of fact, a reduction of only 10 percent in the existing rates in southern territory, the Southwest, and western trunk-line zone III will be of comparatively little benefit to those areas because of the thousands of exception and commodity rates which are now below the classification basis and on which the traffic is now moving. The majority recognize that one of the chief objectives in a general revision of class rates should be to minimize the use of exceptions, many of which are ambiguous and difficult of application, and to utilize to a much greater extent than before, the class rates for the actual movement of the traffic. A reduction of only 10 percent, and especially without disturbing existing exception or column rates, will not to any material extent meet this objective.

Moreover, it seems to me important, as urged by a number of the parties to this proceeding, that because of the intense commercial and industrial competition which may be expected in the postwar period, the crying need is for a stable and permanent adjustment on a fair and reasonable basis now, so that the shipping public, which will play an important part in that competitive struggle, can plan intelligently for the future. Looking at this, as we should, from a practical standpoint, I am convinced that the best interests of the country as a whole, and of the shippers and the carriers as well, would be better served by the establishment now—at a time when the revenues of the carriers can better stand the reductions and when there is still time to make readjustments in exception and commodity rates, if need be, before the intense competition of the postwar period sets in—of a permanent and

stable rate adjustment, on the reasonable bases which are advocated in this expression, rather than by putting off to the distant future a permanent adjustment and foisting upon the public the unsound and unstable interim adjustment required by the majority.

Finally, the rate bases which I propose would not, as do the findings in the report, set aside long-established principles of rate making under which this country has become great and has developed the most efficient transportation system in the world; nor would they, as do the majority findings, "attempt to equalize fortune, opportunities, and abilities," which, as the Supreme Court pointed out in *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42, is contrary to the purposes of the Interstate Commerce Act.

BARNARD, *Commissioner*, dissenting:

I am of the opinion that the record in this proceeding does not support or warrant the findings and conclusions reached by the majority and, therefore, I dissent.

The Commission is in duty bound to confine itself to the record and in making its findings and arriving at its conclusions it may not go outside thereof. Unless its findings of fact upon which it bases its conclusions can find support in the evidence introduced, such findings and conclusions become unwarranted and unlawful.

This proceeding involves the classification ratings in all territories throughout the entire United States and class rates in official, southern, southwestern, and western trunk-line territories both interterritorially and intraterritorially. I purpose first to discuss the matter of a uniform classification.

Uniform classification.—The majority adopts the pattern of the official classification as the one which it thinks best comports with the requirement of the statute that the individual and joint classifications shall be just, fair, and reasonable for application throughout the country. The evidence fails to convince me that there is any greater merit in official classification than there is in any of the others. There is no evidence dealing with the classification ratings on particular articles. The record with respect to descriptions is general and consists mainly of comparisons of the ratings as a whole in one territory with another, and expressions of beliefs on the part of the southern and western interests that the official classification is lower and that they should have that classification because of their claim to parity with official classification. I feel that there should be a uniform classification throughout the country. I do not believe, however, that this objective can be effectively accomplished by displacing the classifications now in effect in Illinois, southern, and western territories with the official classification without giving proper consideration to the characteristics of all

of the articles embraced in the classifications and the commercial and competitive conditions in the respective territories. It seems to be the view of the majority that the Commission is authorized to set aside the classifications now in effect without such a showing. I am not in accord with that view.

Uniform class rates.—I purpose next to consider the class rates embraced in this proceeding. Inasmuch as only a very small percentage of the traffic in the territories here involved moves on class rates, I have been at a loss to understand why the column rates and exceptions to the class rates were not included in this investigation, and I am of the opinion that the failure to consider these rates will bring about widespread revisions of the exceptions and the column rates made with relation to class rates. I appreciate that sound reasons can be given for not including commodity rates, but the failure to include column rates and exceptions to the class rates cannot, in my opinion, be successfully defended.

The principal findings of the report with respect to the class rates may be divided into two parts. The first part relates to a permanent adjustment to become effective at some uncertain date in the future and provides a uniform scale of class rates throughout that portion of the country east of the Rocky Mountains, which is to average 115 percent of the basic scale of first-class rates prescribed in the eastern revision as increased by the general increases of 1938, with other classes related percentage-wise to first class. The second part relates to the so-called *ad interim* adjustment which is to continue in force until a uniform classification is prepared. That adjustment provides for a reduction of 10 percent in the existing class rates within southern, southwestern, and western trunk-line territories and interterritorially, subject to a distance scale of class rates as minima; and an increase of 10 percent in the existing class rates within official territory, including Illinois territory. It is my view that the existing differences between the levels of the intraterritorial class rates in the South and West and those in official territory are too great, and that the interterritorial rates between the respective territories should be revised; but as the evidence of the proponents of changes in the present rate structures was directed to uniformity on the basis of the eastern level, there is not, however, sufficient evidence in this record to enable me to express an opinion as to what would be a just, reasonable, and nondiscriminatory class-rate adjustment.

In order to demonstrate of how very little importance is the class rate traffic within the respective territories and interterritorially as compared with the traffic which moves on rates other than the class rates, I call attention to the following table compiled from a study

made by a member of our staff and which was received as evidence in this case and is made a part of the majority report:

Territories (within, or from one to another)	Percent of carloads		
	Class rates	Exception rates	Commodity rates
Official	5.8	17.8	76.7
Southern	1.8	6.0	92.2
Western trunk-line	0.8	.2	99.2
Southwestern	2.4	4.4	93.2
Official to southern	12.6	36.3	51.1
Southern to official	.9	4.9	94.2
Official to western trunk-line	12.3	35.4	52.3
Western trunk-line to official	3.1	1.0	95.1
Official to southwestern	22.5	52.0	25.5
Southwestern to official	1.5	3.4	95.9
Southern to western trunk-line	1.5	13.5	85
Western trunk-line to southern	6.1	3.1	90.8
Southern to southwestern	6.1	22.1	71
Southwestern to southern	1.2	4.3	94.5
Western trunk-line to southwestern	13.0	6.2	80.8
Southwestern to western trunk-line	2.0	3.0	95.0

I fail to see any justification for disrupting the entire rate structures throughout the territories involved for the sole purpose of bringing about uniformity of class rates, especially in view of the fact that, as heretofore stated, only a very small percentage of the total tonnage moves under those (class) rates.

The class rates now in effect in the territories here involved have been prescribed by orders of this Commission. They stand as the lawful and effective rates and may not be supplanted by other rates unless and until by a preponderance of the evidence such existing rates have been found to be unjust and unreasonable or unduly prejudicial or preferential.

Representatives of the eastern States and numerous shippers and the rail carriers in official territory urged that no increases be made in the class rates in that territory, and all expressed their satisfaction with the present class-rate structure. Also the Southern Governors' Conference, the foremost complainant, approves the present class rates in official territory and on page 277 of its brief filed in this proceeding in support of the retention of these rates, we find the following statement:

> The eastern first class scale has been used with apparent general satisfaction in official classification territory, subject to the official classification. Neither the railroads nor the shippers are asking that that scale and classification be changed. It therefore seems to us that it is proper to apply it throughout the territory east of the Mississippi River.

The evidence also further establishes that the southwestern and western trunk line proponents of uniformity favor the retention of the class rates in official territory as they now exist. Nevertheless and in the face of this unanimity of approval, the majority, disregard-

ful thereof, would increase these rates in official territory on an *ad interim* basis by 10 percent and a permanent basis by an average of 15 percent. I inquire of them, where is the evidence which authorizes such increases or as far as that be concerned any increases whatever?

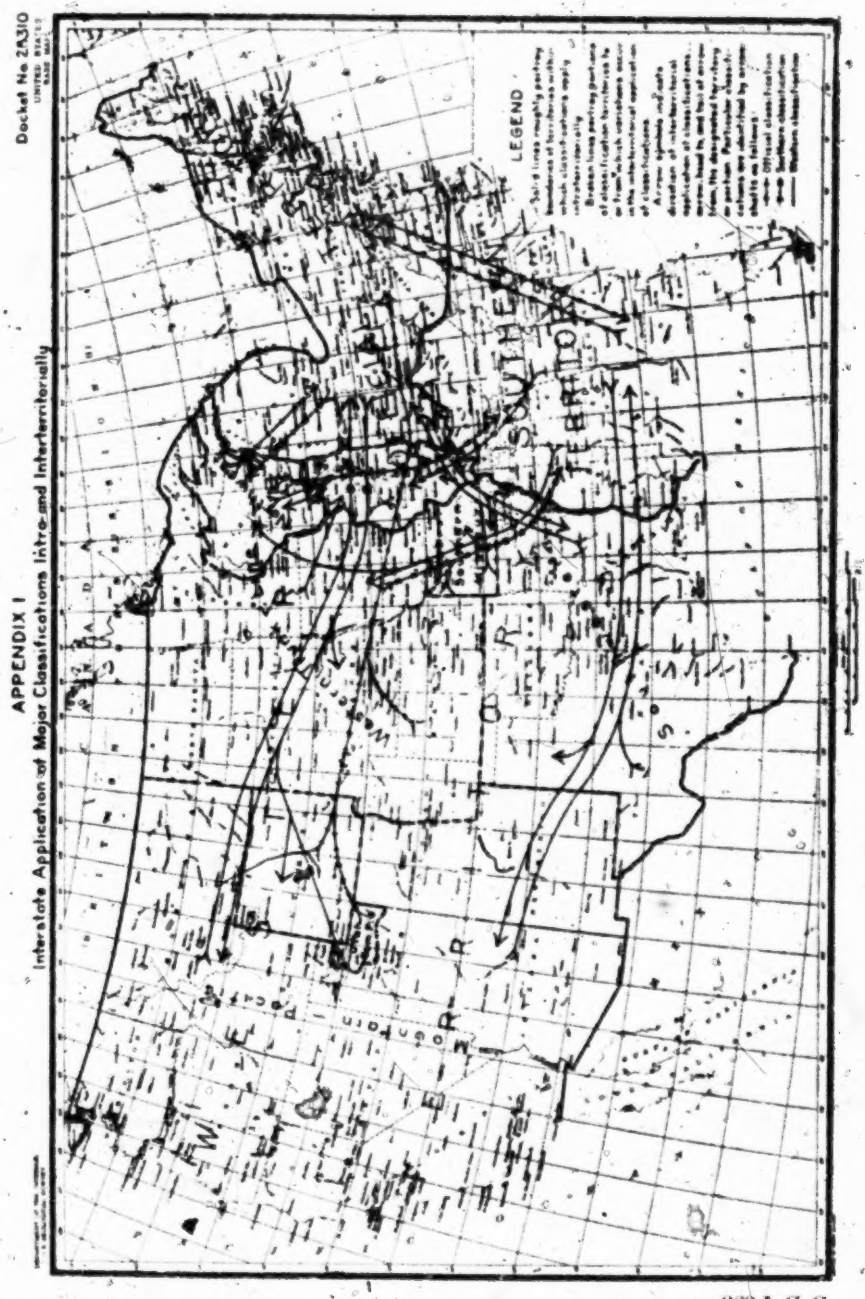
I come now to the consideration of the class rates in southern, southwestern, and western trunk-line territories. The evidence introduced in these proceedings does not justify the reductions herein ordered, and in the absence of such showing, the action taken in making such reductions is unwarranted, and not only is this true, but as a result of these reductions in the class rates in southern, southwestern, and western trunk-line territories, the carriers operating therein will suffer substantial reductions in their revenues. Just what steps are contemplated by the majority to enable the carriers to recoup such losses when they occur, and in my opinion they are bound to occur, has not been made clear.

I am unable to find in this record sufficient evidence to support the claim of the Southern Governors' Conference that the class rate structures within the South and between the South and official territory have restricted the industrial growth of the South and have favored and stimulated the growth of industry in the North. On the contrary, the evidence shows that the South has progressed industrially during the last decade much more rapidly than any other section of the country. Furthermore, the evidence fails to convince me that the products of the South cannot compete with the products of official territory in that territory, but for the purpose of the argument, let it be assumed that the contrary is true. Nevertheless, if true, it does not come about because of the difference in the class rates but is due to other causes which have no connection whatever with these rates.

The only ground that I can conceive which impels the majority to condemn the class rates prescribed in the class-rate scales is the cost evidence prepared by members of our staff purporting to show that the cost of transporting freight by railroad is no greater in the South than in the North and but slightly greater in the southwestern and the western trunk-line territories than in the North. These studies attempt to arrive at a territorial comparison of average cost of all traffic and for traffic transported in different types of cars, i. e., box, gondola, and hopper, stock, flat, tank and refrigerator cars, and do not purport to show the costs of transporting class-rate traffic in any territory. The studies make no allowance for the difference in the density of traffic in the different territories. If accepted at face value, they do not prove, nor were they intended to show the average cost of transporting class-rate traffic in any territory. Assuming, how-

ever, that the average cost of transporting class-rate traffic in the South and the West is either the same or not greatly in excess of transporting corresponding freight in the North for example, it does not follow upon such a premise that the rates must be the same. This is because of the well-known fact that the percent of profit on some kinds of traffic has always been and perforce must continue to be much greater than on others, as there is a great deal of traffic essential to the economic welfare of the country which would not move on rates that produce merely average percentages of profit above cost. Therefore, before we may conclude that substantially equal costs warrant the prescription of substantially equal rates, we must first find that the consist of traffic in the several territories is so similar as to make the rates remunerative in each of the territories. In my opinion, no such showing has been made in this proceeding.

Although it appears that the differences between the class rates in official territory and those in the other territories may be too great, there is nothing in this record which warrants the conclusion that the class rates throughout the entire area east of the Rocky Mountains should be on a uniform basis or level. However desirable a uniform system of class rates may be, if in order to accomplish that uniformity it becomes necessary to disrupt the existing rate structures without sufficient evidence as to the propriety of such uniformity, and without the rates involved having been condemned, the end does not justify the means employed, and such action cannot have my support.


Docket No. 28310
APPENDIX I
Interstate Application of Major Classifications Intra- and Interterritorially
LEGEND
SOUTHERN
Official classification territory
Southern classification territory
Western classification territory
Boston
Chicago
Pittsburgh
Portland
Seattle
Spokane
Los Angeles
San Francisco

APPENDIX 2

Less than-carloads

TABLE I.—*Official versus southern classification ratings, same items,[1] and rates*

[Rates are stated in cents per 100 pounds for 200 miles]

Classification and territory	Class	Number of ratings	Rate	Classification and territory	Class	Number of ratings	Rate
Official	100	2092	80	Official	55	616	44
	100	2075	112		85	1	93
	85	5	95		70	2	78
Southern	70	2	78	Southern	55	585	62
	55	7	62		50	2	56
	45	2	50		45	27	50
	40	1	45		40	19	45
Official	85	2672	68	Official	50	395	40
	85	2600	95		70	2	73
	70	21	78		55	11	62
Southern	55	42	62	Southern	50	682	56
	50	2	56		45	134	50
	45	2	50		40	152	45
	40	5	45		30	4	34
Official	70	2716	56				
	70	2390	78				
Southern	55	278	62				
	50	8	56				
	45	26	50				
	40	14	45				

[1] As in effect Aug. 3, 1942.

TABLE II.—*Official versus western classification ratings, same items,[1] and rates*

[Rates are stated in cents per 100 pounds for 200 miles, western rates being those prescribed for western trunk-line zone 1]

Classification and territory	Class	Number of ratings	Rate	Classification and territory	Class	Number of ratings	Rate
Official	100	2092	80	Official	70	2716	56
	100	2076	97	Western	70	2571	66
Western	85	4	82		55	145	53
	70	10	68	Official	55	616	44
	55	2	53		55	1	82
Official	55	2672	68	Western	70	2	65
	55	2625	82		55	613	53
Western	70	29	68	Official	50	395	40
	55	18	53		85	1	82
				Western	70	3	66
					55	691	52

[1] As in effect Aug. 3, 1942.

TABLE III.—*Southern versus western classification ratings, same items, and rates*

[Rates are stated in cents per 100 pounds for 200 miles, western rates being those prescribed for western trunk-line zone I]

Classification and territory	Class	Number of ratings	Rate	Classification and territory	Class	Number of ratings	Rate
Southern	100	2,038	112		85	15	82
Western	100	2,056	97	Western	70	164	68
Southern	55	2	53		55	725	53
	85	2,583	95	Southern	50	668	56
Western	100	1	97		85	2	82
	85	2,578	82	Western	70	4	68
	70	1	68		55	662	53
Southern	55	3	53	Southern	45	193	50
	70	2,407	78		100	1	97
Western	85	4	82	Western	70	24	68
	70	2,402	66		55	588	53
	55	1	53	Southern	40	233	45
Southern	85	907	62		85	4	82
				Western	70	10	68
					55	219	53

[1] As in effect Mar. 17, 1942.

APPENDIX 3

Carloads

TABLE I.—*Official versus southern classification ratings, same items, and rates*

[Rates are stated in cents per 100 pounds for 200 miles]

Classification and territory	Class	Number of ratings	Rate	Classification and territory	Class	Number of ratings	Rate
Official	100	213	80	Official	40	1,105	32
	100	199	112		70	1	75
Southern	85	7	95		55	3	62
	75	2	84	Southern	45	288	50
Official	70	5	78		40	809	45
	85	766	68		37½	2	42
	100	1	112		35	2	39
	85	578	95	Official	37½	266	30
Southern	77½	24	87		55	7	62
	70	161	78		45	96	50
	55	4	62		40	561	45
Official	35	1	39	Southern	37½	90	42
	70	1,430	56		30	10	34
	85	1	112		17½	2	20
	70	1,528	78	Official	35	2,709	39
	65	1	73		55	44	62
	60	1	67		45	180	50
Southern	55	25	62		40	1,644	45
	45	10	50		37½	58	42
	40	5	45		35	380	39
	37½	1	42	Southern	32½	187	36
	35	1	39		30	314	34
Official	40	1,256	44		27½	58	31
	70	19	78		25	13	28
	55	1,183	62		22½	26	25
Southern	50	13	56		20	1	22
	45	30	50		17½	2	20
	40	12	45	Official	27½	677	32
	37½	3	42		60	55	75
Official	30	3	34		55	2	62
	60	1,185	68		35	28	39
	70	3	78		32½	28	36
	55	1,000	62	Southern	30	150	34
Southern	50	31	56		27½	14	31
	45	294	50		25	55	28
	40	10	45		22½	154	25
	37½	2	42		20	43	22
	35	1	39		17½	77	20
	30	8	34				
Official	45	245	36				
	45	5	62				
Southern	40	315	50				
	40	12	45				

[1] As in effect Aug. 5, 1942.

TABLE II.—*Official versus western classification ratings, same items,*[1] *and rates*

[Rates are stated in cents per 100 pounds for 200 miles, western rates being those prescribed for western trunk-line zone I]

Classification and territory	Class	Number of ratings	Rate	Classification and territory	Class	Number of ratings	Rate
Official	100	213	80	Official	45	335	36
Western	100	202	97	Western	55	8	53
	85	7	82		45	323	44
	70	3	68		40	1	39
	55	1	53		37½	3	36
Official	85	766	68	Official	40	1,105	38
Western	100	1	97	Western	70	1	32
	85	587	82		55	5	53
	77½	24	75		45	994	44
	70	152	68		40	32	39
	45	1	44		37½	82	36
	32½	1	32		35	1	34
Official	70	1,433	56	Official	37½	768	30
Western	85	1	82	Western	55	8	53
	70	1,381	68		45	110	44
	65	11	63		37½	644	36
	55	29	53		32½	2	32
	45	8	44		17½	2	17
	37½	3	36	Official	35	2,709	28
Official	55	1,270	44		55	36	53
Western	70	19	68		45	309	44
	55	1,198	53		37½	2,115	36
	50	19	49	Western	35	3	34
	45	31	44		32½	133	32
	37½	2	36		30	83	29
	32½	1	32		22½	23	22
Official	50	1,185	49		17½	7	17
Western	70	4	68	Official	27½	677	22
	55	995	53	Western	45	1	44
	50	57	49		37½	83	36
	45	85	44		32½	136	32
Western	42½	1	41		30	243	29
	40	3	39		22½	112	20
	37½	29	36		17½	102	17
	35	4	34				
	32½	2	32				
	30	5	29				

[1] As in effect Aug. 3, 1942.

TABLE III.—*Southern versus western classification ratings, same items,*[1] *and rates*

[Rates are stated in cents per 100 pounds for 200 miles, western rates being those prescribed for western trunk-line zone I]

Classification and territory	Class	Number of ratings	Rate	Classification and territory	Class	Number of ratings	Rate
Southern	100	201	142	Southern	40	2,938	45
Western	100	200	97		55	36	53
	85	1	82		45	850	44
Southern	85	580	95		40	17	39
Western	100	[illegible]	97		37½	2,091	36
	85	578	82	Western	35	7	34
	70	1	68		32½	17	32
Southern	70	1,572	78		30	6	29
Western	85	14	82		22½	2	22
	70	1,496	68		17½	2	17
Southern	55	2	53	Southern	35	338	39
	55	2,192	62		45	3	44
	70	49	68		37½	326	36
	55	2,135	53	Western	35	1	34
	45	3	34		32½	5	32
Western	42½	1	41		22½	2	22
	40	1	39		17½	1	17
	37½	2	36	Southern	30	618	34
	32½	1	32		55	7	53
Southern	45	1,105	50		45	2	44
	70	6	68		27½	149	36
	55	131	53	Western	32½	132	32
	45	953	44		30	208	29
	40	2	39		22½	24	22
Western	37½	5	36		17½	6	17
	32½	3	32	Southern	22½	176	23
	30	2	29		37½	5	36
	22½	2	22		32½	22	32
	17½	1	17	Western	30	24	29
					22½	118	22
					17½	7	17

[1] As in effect Mar. 17, 1942.

APPENDIX 4

ANALYSIS OF CLASSIFICATIONS, ANY-QUANTITY AND LESS-THAN-CARLOAD RATINGS

Kind and number of any-quantity and less-than-carload ratings in official, southern and western classifications, respectively, their distribution into the different classes, and comparison, class for class, of the ratings in official with corresponding ratings in southern and western classifications. Total numbers of ratings in each class in the respective classifications are also stated

Record shows the source of these data as Consolidated Freight Classification No. 15, comprising Official Classification No. 59, Agent A. R. Greenley's I. C. C.-O. C. No. 59, Southern Classification No. 58, Agent E. H. Dulaney's I. C. C. No. 88, and Western Classification No. 70, Agent R. C. Fyfe's I. C. C. No. 28, as amended in effect on Aug. 3, 1942]

Official			Southern	4t1 (400)		3t1 (300)		2½t1 (250)		D1 (200)		1¾t1 (175)		1½t1 (150)		1¼t1 (125)		110		1 (100)	
Class and percentage	Number of ratings		Western	4t1 (400)		3t1 (300)		2½t1 (250)		D1 (200)		1¾t1 (175)		1½t1 (150)		1¼t1 (125)		110		1 (100)	
	AQ	LCL		AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL
4t1 (400)		2	Sou		2																
			West		2																
3t1 (300)	6	18	Sou			6	16														
			West			6	18														
2½t1 (250)	1	21	Sou					1	21												
			West					1	21												
D1 (200)	4	357	Sou							4	356										--
			West							4	357										
1¾t1 (175)		13	Sou										13								
			West										13								

1½11 (150)		682	West												2	682						
1½11 (125)		99	West												2	683	99					
110		1	West														99					
1 (100)	34	2,094	West																		31	2,075
2 (85)	15	2,674	West																		33	2,078
3 (70)	15	2,717	West																			
60		14	West																			
57		1	West																			
R26 (55)		617	West																			
4 (50)	3	996	West																			
40		33	West																			
IC	2	4	West																			3
NR		5	West																			
NT	1	2	West																			
Totals	8	10,151	South		2	6	16	1	211	4	336		13	2	482		99		1	31	2,075
			West		2	7	28	1	21	4	337		13	2	483		99		1	33	2,081

Kind and number of any-quantity and less-than-carload ratings in official, southern, and western classifications—Continued.

Class and percentage	Official		Southern	2 (85)		3 (70)		4 (55)		50		5 (45)		6 (40)		8 (30)		IC		NR		NT	
	Number of ratings		Western	2 (85)		3 (70)		4 (55)												NR		NT	
	AQ	LCL		AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL	AQ	LCL
411 (400)		2	South																				
			West																				2
311 (300)	6	18	South																				
			West																				
2½11 (250)	1	21	South																				
			West															1					
D2 (200)	4	357	South																				
			West																				
1¾11 (175)		13	South				1																
			West															1					
1½0 (150)	2	483	South																				
			West																				
1½11 (125)		99	South																				
			West																				
110		1	South																				
			West										2		1			2					
1 (100)	34	2,094	South		5		2	3	7														
			West	1	4		10		2														
2 (85)	15	2,674	South	13	2,601		26	1	43				2	1	5								
			West	15	2,629		29		18														

3 (70)	15	2,717	Sou.			7	2,300	8	278		8		26		14						1			
			West.			15	2,572		145															
60		14	Sou.				2		12															
			West.				4		10															
57		1	Sou.						1															
			West.						1															
R26 (55)		617	Sou.		1		2		566		2		27		19						1			
			West.		1		2		613															
4 (50)	3	996	Sou.				2		11	3	682		134		162		4				1			
			West.		1		3	3	902															
40		33	Sou.												33									
			West.						33															
IC	2	4	Sou.															2	3					
			West.		1	1		1																
NR		5	Sou.		1		1				1										2			
			West.		1		1		1												2			
NT	1	2	Sou.																				2	
			West.																				2	
Totals	83	10,151	Sou.	13	2,608	7	2,420	12	917	3	695		191	1	234		4	2	6		4	1	6	
			West.	16	2,634	16	2,621	4	1,815												3		3	

Explanation of abbreviations and characters used in this appendix:
Sou. means southern classification.
West. means western classification.
4tl means 4 times first class.
3tl means 3 times first class.
2½tl means 2½ times first class.
Dl means double first class.
1¾tl means 1¾ times first class.
1½tl means 1½ times first class.
1¼tl means 1¼ times first class.
R26 means rule 26 rating.
AQ means any quantity.
LCL means less carloads.

Numerals greater than 8 (except R26) appearing in the headings of columns or in the first column, and standing alone, are the percentages of first class as specified in the respective classification; and those enclosed in parentheses immediately after the regular numbered class ratings are the percentages of first class prescribed in eastern, southern, and western trunk-line-southwestern revisions for class rates governed by official, southern, and western classifications, respectively. Percentages existing in mountain-Pacific territory differ on certain classes from those prescribed in the western revision and are not covered in this appendix.

IC means that the items covered are subject to the rates and regulations of individual carriers.

NR means that there are no ratings on the items covered.

NT means that the items covered are not taken by carriers.

| | | |

45	335	Sou				11	1
40	1,105	West		1			1
		Sou				785	24
37½	766	West		1		561	32
8 (35)	2,710	Sou		1			
		West				1,646	
32½	7	Sou					
		West					
30	89	Sou				13	
		West					
6 (27½)	679	Sou				35	
		West					
25	34	Sou					
		West					
22½	20	Sou					
		West					
20	1	Sou					
		West					
IC	10	Sou					
		West					
NR	9	Sou					
		West					
Totals	10,682	Sou		5		3,129	25
		West		9	1		36

Explanation of abbreviations and characters used in this appendix:

Sou. means southern classification.
West. means western classification.
D1 means double first class.
1½t1 means 1½ times first class.
1¾t1 means 1¾ times first class.
R26 means rule 26 rating.

1													
1	3												
24	2	1	1										
32	32		1										
	90	10									2		
	644			2							2		
	58	380		107	204	38	13	36	1	2			1
	2,116		3	133	83			23		7			
				5	1			1					
				6	1								
					72	3		1					
	21			12	50					6			
	2	5		28	350	16	25	108	33	77			
	83			136	243			112		102			2
					1		8	24		1			
	3				6			25					
								14	2	4			
								14		6			
									1				
								1					
		1						4			4		
	2			1				4					
				1			2						3
								2					4
25	165	400	1	141	637	57	48	188	37	86	10		7
36	2,388		8	294	388			181		123			9

Numerals greater than 12 (except R26) appearing in the headings of columns or in the first column, and standing alone, are the percentages of first class as specified in the respective classification; and those enclosed in parentheses immediately after the regular numbered or lettered class ratings are the percentages of first class prescribed in eastern, southern, and western trunk-line-southwestern revisions for class rates governed by official, southern, and western classifications, respectively. Percentages existing in mountain-Pacific territory differ on certain classes from those prescribed in the western revisions and are not covered in this appendix.

IC means that the items covered are subject to the rates and regulations of individual carriers.

NR means that there are no ratings on the items covered.

APPENDIX 5

Analysis of classifications, carload ratings

KIND AND NUMBER OF CARLOAD RATINGS IN OFFICIAL, SOUTHERN, AND WESTERN CLASSIFICATIONS, RESPECTIVELY, THEIR DISTRIBUTION INTO THE DIFFERENT CLASSES, AND COMPARISON, CLASS FOR CLASS, OF THE RATINGS IN OFFICIAL WITH CORRESPONDING RATINGS IN SOUTHERN AND WESTERN CLASSIFICATIONS. TOTAL NUMBERS OF RATINGS IN EACH CLASS IN THE RESPECTIVE CLASSIFICATIONS ARE ALSO STATED

[Record shows the source of these data as Consolidated Freight Classification No. 15, comprising Official Classification No. 59, Agent A. R. Greenley's I. C. C.-O. C. No. 59, Southern Classification No. 58, Agent E. H. Dulaney's I. C. C. No. 88, and Western Classification No. 70, Agent R. C. Fyfe's I. C. C. No. 28, as amended in effect on August 3, 1942]

Official		Sou.	D1 (200)	1½t1 (150)	1¼t1 (125)	1 (100)	2 (85)	77½	75	3 (70)	70	65	60	4 (55)	55	50	5 (45)
Class and percentage	Number of ratings	West.	D1 (200)	1½t1 (150)	1¼t1 (125)	1 (100)	2 (85)	77½	75	3 (70)	70	65	60	4 (55)	55	50	A (45)
D1 (200)	5	Sou	3	1		1											
		West	3	1			1										
1½t1 (150)	3	Sou		1		1	1										
		West		1		1											
1¼t1 (125)	19	Sou								1							
		West			18		1										
					18												
1 (100)	215	Sou				199	7			5							
		West				204	7		2	3				1			
2 (85)	767	Sou	6			1	575	24		161				4			1
		West				1	588	24		38	114						1
75	2	Sou							2								
		West							2								
3 (70)	1,437	Sou					1			1,320	1	11	1	73			10
		West					1			1,348	33	11		29			8
70	2	Sou									2						
		West									2						
65	6	Sou															
		West								5			4	2			
														1			

Analysis of classifications, carload ratings—Continued

Official		Sou.	45		6 (40)	40	37½	7 (35)	35	32½	8 (30)	27½	9 (25)	10 (22½)	11 (20)	12 (17½)	IC	NR
Class and percentage	Number of ratings	West.	45	42½		40	5 (37½)		35	B (32½)	C (30)			D (22½)		E (17½)		NR
D1 (200)	5	Sou																
		West																
1½t1 (150)	3	Sou																
		West																
1¼t1 (125)	19	Sou																
		West																
1 (100)	215	Sou															2	
		West																
2 (85)	767	Sou						1									1	
		West								1								
75	2	Sou																
		West																
3 (70)	1,437	Sou			5		1	1									3	1
		West					3											2
70	2	Sou																
		West																
65	6	Sou																
		West																
60	3	Sou																
		West								1								
R26 (55)	1,245	Sou			13		3				3							
		West					2			1								
55	25	Sou																
		West																
4 (50)	1,166	Sou			90		9	1			5							2
		West		1		3	29		4	2	4							1
50	22	Sou									1						2	
		West									1							

APPENDIX 6

TABLE I.—*Average rating assigned to items of various weights per cubic foot*

Weight per cubic foot	Average percent of first class					
	Less-than-carload ratings			Carload ratings		
	First period [1]	Second period [2]	Third period [3]	First period [1]	Second period [2]	Third period [3]
Official classification						
Under 10 pounds	129.3	106.4	111.9	66.5	48.1	67.6
10 pounds and under 20	91.2	81.1	83.	48.3	42.9	49.4
20 pounds and under 30	82.1	78.9	76.6	43.2	40.0	43.6
30 pounds and under 40	78.6	75.3	73.5	42.7	38.4	40.8
40 pounds and under 50	77.1	71.0	66.7	42.0	40.3	38.7
50 pounds and under 60	80.3	71.1	64.8	41.3	39.0	37.3
60 pounds and under 70	76.0	65.3	65.1	41.3	38.7	35.6
Southern classification						
Under 10 pounds	128.0	109.0	109.7	67.5	52.9	66.2
10 pounds and under 20	93.7	82.8	82.5	53.4	48.0	49.3
20 pounds and under 30	83.6	79.0	73.4	47.5	44.8	43.1
30 pounds and under 40	80.0	74.3	70.8	47.8	43.3	41.5
40 pounds and under 50	78.3	71.1	66.4	47.1	46.5	39.0
50 pounds and under 60	83.1	70.0	63.8	47.6	40.2	37.2
60 pounds and under 70	79.0	63.2	62.0	47.6	41.4	37.3
Western classification						
Under 10 pounds	129.6	108.3	111.6	68.0	57.2	66.3
10 pounds and under 20	94.1	83.3	82.9	52.5	50.0	51.3
20 pounds and under 30	85.0	80.1	74.9	48.4	45.2	45.3
30 pounds and under 40	82.8	75.2	72.9	47.1	43.8	42.8
40 pounds and under 50	79.4	72.6	66.7	47.3	46.4	40.3
50 pounds and under 60	83.0	70.2	65.6	46.4	41.0	38.5
60 pounds and under 70	79.4	65.3	67.7	47.4	45.2	37.6

[1] From June 30, 1928, to Dec. 31, 1930.
[2] From Dec. 24, 1936, to May 31, 1940.
[3] From June 1, 1940, to Sept. 30, 1942.

TABLE II.—*Average rating assigned to items of various values per pound*

Value per pound	Average percent of first class					
	Less-than-carload ratings			Carload ratings		
	First period [1]	Second period [2]	Third period [3]	First period [1]	Second period [2]	Third period [3]
Official classification						
Under 10 cents	69.8	68.9	62.4	36.2	35.5	35.5
10 cents and under 20	85.3	75.8	69.7	44.6	39.7	40.7
20 cents and under 30	92.1	82.0	77.9	54.7	41.5	47.3
30 cents and under 40	92.8	86.4	84.6	49.7	45.3	49.6
40 cents and under 50	101.7	93.2	85.4	55.4	46.8	51.2
50 cents and under 60	111.5	89.7	90.0	60.4	45.5	54.4
Southern classification						
Under 10 cents	72.2	68.1	59.4	41.5	38.3	34.6
10 cents and under 20	86.9	77.3	68.5	50.5	45.7	41.3
20 cents and under 30	94.3	84.1	75.5	55.1	45.6	47.6
30 cents and under 40	96.8	87.7	83.0	55.0	56.6	50.4
40 cents and under 50	103.2	85.4	81.8	59.8	55.6	51.3
50 cents and under 60	115.8	88.4	90.0	63.5	52.5	52.9
Western classification						
Under 10 cents	74.2	69.3	63.2	40.8	39.5	36.8
10 cents and under 20	87.7	78.3	70.2	49.7	46.5	42.4
20 cents and under 30	95.2	85.4	77.6	53.6	51.8	49.5
30 cents and under 40	96.6	87.8	84.6	54.8	59.9	51.4
40 cents and under 50	106.7	87.7	84.0	60.1	54.4	53.3
50 cents and under 60	110.1	88.4	90.0	63.7	53.6	54.4

[1] From June 30, 1928, to Dec. 31, 1930.
[2] From Dec. 24, 1936, to May 31, 1940.
[3] From June 1, 1940, to Sept. 30, 1942.

APPENDIX 7

TABLE I.—*Less-than-carload ratings—average by classes of weights per cubic foot and values per pound*

Class (regular and percentage)	First period [1]		Second period [2]		Third period [3]	
	Pounds per cubic foot	Cents per pound	Pounds per cubic foot	Cents per pound	Pounds per cubic foot	Cents per pound
Official classification						
D1 (200)	7.53	37.66				
1½ (150)	9.73	35.18				
1 (100)	24.04	30.96	14.33	29.58	14.96	57.54
2 (85)	30.70	18.85	24.07	22.52	22.48	34.63
3 (70)	41.43	8.78	36.92	10.57	38.76	14.62
R2½ (55)			42.35	5.12	46.93	7.47
4 (50)	53.79	3.39			55.84	4.32
Southern classification						
D1 (200)	7.77	38.14				
1½ (150)	10.82	33.55				
1 (100)	25.19	30.26	14.68	28.54	14.72	56.97
2 (85)	30.89	18.24	26.12	21.94	22.19	35.31
3 (70)	38.67	8.37	38.48	11.45	38.76	13.12
4 (55)	51.23	4.45	42.46	4.34	44.29	8.04
50					56.20	4.77
Western classification						
D1 (200)	9.26	41.00				
1½ (150)	10.80	32.99				
1 (100)	25.34	29.71	14.24	25.05	14.97	57.54
2 (85)	31.10	17.40	26.33	21.72	22.59	35.20
3 (70)	39.50	7.51	38.87	11.68	38.28	14.52
4 (55)	55.80	6.18	46.28	4.14	45.60	6.44

[1] From June 30, 1928, to Dec. 31, 1930.
[2] From Dec. 24, 1936, to May 31, 1940.
[3] From June 1, 1940, to Sept. 30, 1942.

TABLE II.—*Carload ratings—average by classes of weights per cubic foot and values per pound*

Class (regular and percentage)	First period [1]		Second period [2]		Third period [3]	
	Pounds per cubic foot	Cents per pound	Pounds per cubic foot	Cents per pound	Pounds per cubic foot	Cents per pound
Official classification						
2 (85)	4.21	22.10				
3 (70)	24.51	34.81			14.09	55.80
3½6 (55)	34.69	24.18	23.28	22.95	23.03	34.23
4 (50)	32.01	18.80			30.26	26.51
45					30.99	22.59
40			38.09	19.93	34.11	22.36
37½			38.85	15.80		
5 (35)	35.61	9.67	32.78	5.82	41.40	10.15
6 (27½)	45.06	1.95			43.34	2.25
Southern classification						
2 (85)	8.56	48.20				
3 (70)	23.52	34.45	18.14	27.58	13.28	51.90
4 (55)	32.16	20.14	26.69	21.32	22.86	32.54
5 (45)	29.57	13.51	24.93	15.90	29.05	23.13
6 (40)	41.09	6.96	38.16	9.92	36.82	15.19
37½					42.04	11.97
7 (35)					43.70	9.92
8 (30)	38.91	2.62	32.70	2.90	38.19	3.37
Western classification						
2 (85)	8.31	44.42				
3 (70)	24.30	31.52	18.86	28.75	13.99	52.16
4 (55)	32.69	20.30	27.09	20.99	23.10	32.63
A (45)	27.24	14.46	29.64	13.46	30.35	21.86
40	39.89	8.04				
5 (37½)			40.15	7.41	41.22	10.39
B (32½)						
C (30)	48.77	2.02	43.94	2.24	43.82	3.03

[1] From June 30, 1928, to Dec. 31, 1930.
[2] From Dec. 24, 1936, to May 31, 1940.
[3] From June 1, 1940, to Sept. 30, 1942.

APPENDIX 8

Principal intraterritorial scales for class 100 (first class) rates, including the general 10-percent increase of 1938

[Rates are stated in cents per 100 pounds]

Distances, in miles (from preceding through distance stated)	Official territory		Southern territory		Western trunk-line territory		Southwestern territory
	Eastern	New England zone A [1]	K-2 [2]	Border area [3]	Zone I	Zone II	Zone III [4]
5	33	36	37	40	35	37	40
10	34	36	40	40	36	40	42
15	36	39	43	42	39	42	45
20	37	40	45	44	40	44	47
25	40	42	48	46	42	46	51
30	41	43	51	48	44	50	54
35	43	45	54	51	46	52	56
40	44	46	56	53	48	55	59
45	46	48	59	55	51	57	62
50	47	50	62	57	53	61	65
55	50	52	65	59	55	63	68
60	51	53	67	62	57	65	70
65	53	55	70	64	59	68	74
70	54	56	73	66	62	70	76
75	56	59	75	68	64	73	79

See footnotes at end of table.

Principal intraterritorial scales for class 100 (first class) rates, including the general 10-percent increase of 1938—Continued

[Rates are stated in cents per 100 pounds]

Distances, in miles (from preceding through distance stated)	Official territory		Southern territory		Western trunk-line territory		Southwestern territory
	Eastern	New England zone A [1]	K-2 [2]	Border area [3]	Zone I	Zone II	Zone III [4]
80	57	61	77	70	66	75	81
85	58	62	79	73	68	77	84
90	59	63	80	75	70	79	86
95	61	64	81	77	72	84	88
100	62	65	84	79	73	83	90
110	64	67	87	83	76	86	94
120	66	69	90	86	78	89	97
130	68	72	94	89	81	92	100
140	70	74	97	92	84	95	103
150	73	76	100	96	86	98	107
160	74	77	103	99	88	100	110
170	76	79	106	102	90	103	113
180	77	81	108	106	92	106	117
190	79	84	110	109	95	109	120
200	80	85	112	112	97	111	123
210	83	87	114	114	99	113	125
220	84	88	117	117	101	116	128
230	86	90	119	119	102	118	130
240	87	91	121	121	105	121	133
260	90	95	125	125	109	125	138
280	92	97	130	130	113	131	143
300	96	100	134	134	117	134	147
320	98	102	139	139	121	139	153
340	101	107	143	143	125	143	157
360	103	109	147	147	130	147	163
380	106	111	152	152	133	152	167
400	109	114	156	156	136	156	172
420	111	117	160	161	141	161	177
440	114	120	163	165	145	165	183
460	117	122	166	169	150	169	187
480	119	124	169	174	153	174	191
500	122	129	173	178	156	178	196
520	124	131	176	182	161	183	201
540	128	134	179	185	165	187	206
560	130	136	183	188	168	191	211
580	132	139	186	191	173	196	216
600	135	142	189	195	176	200	220
620	138	144	193	198	180	205	226
640	141	147	196		185	209	230
660	143	151	199		188	213	234
680	145	153	202		193	218	240
700	149	156	206		196	222	244
720	151	158	209		199	226	249
740	153	161	212		201	229	252
760	155	163	216		205	232	256
780	157	165	219		208	235	260
800	160	167	222		210	239	263
825	163		226		215	243	268
850	165		229		218	248	273
875	168		232		222	252	277
900	171		235		226	256	282
925	174		239		230	261	287
950	176		242		233	265	292
975	179		245		237	270	296
1,000	182		249		240	273	300
1,025	185		252		244	277	306
1,050	187		255		248	282	310
1,075	190		259		252	286	315
1,100	193		262		255	290	319

See footnotes at end of table.

Principal intraterritorial scales for class 100 (first class) rates, including the general 10-percent increase of 1938—Continued

[Rates are stated in cents per 100 pounds]

Distances, in miles (from preceding through distance stated)	Official territory		Southern territory		Western trunk-line territory		Southwestern territory
	Eastern	New England zone A [1]	K-2 [2]	Border area [3]	Zone I	Zone II	Zone III [4]
1,125	196		265		260	295	325
1,150	198		268		263	299	329
1,175	201		272		266	304	333
1,200	204		275		270	307	338
1,225	207		278		274	311	343
1,250	209		282		277	316	348
1,275	212		285		282	320	352
1,300	215		288		285	325	356
1,325	218		292		289	329	362
1,350	220		295		293	333	366
1,375	223		298		296	338	371
1,400	226		301		299	341	375
1,425	229		305		304	345	381
1,450	231		308		307	350	385
1,475	234		311		311	354	389
1,500	237		315		315	359	394

[1] New England zone B scale is 10 percent higher than the zone A scale.

[2] Scale prescribed as increased 10 percent. On July 7, 1941, the carriers voluntarily reduced the rates throughout southern territory for distances from 0 through 190 miles to basis of the border-area scale shown in the next column of this table.

[3] Scale prescribed in the area of southern territory bordering on official territory.

[4] This scale applies also zone III of western trunk-line territory. Southwestern zone IV scale, 15 percent higher than zone III scale, is not shown because carriers have abandoned it in favor of the latter scale.

APPENDIX 9

FIRST-CLASS RATES BETWEEN REPRESENTATIVE POINTS THROUGHOUT THE TERRITORIES EMBRACED IN THE PROCEEDING

[Distances stated are those computed over the shortest possible rail routes by which cars may be moved without transfer of lading; "Present rates" and "Eastern scale" are first-class rates in effect Apr. 1, 1943, but exclusive of the temporary general increase then also in effect but suspended May 15, 1943]

TABLE I.—*Intraterritorially*

Between official territory	And official territory																											
	Baltimore, Md.		Bangor, Maine		Boston, Mass.		Charleston, W. Va.		Chicago, Ill.		Dayton, Ohio		Detroit, Mich.		Louisville, Ky.		Montpelier, Vt.		New York, N. Y.		Pittsburgh, Pa.		Richmond, Va.		St. Louis, Mo.		Syracuse, N. Y.		Terre Haute, Ind.	
	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate
Baltimore, Md.			663	152	428	114	432	110	307	154	535	125	398	132	682	145	530	134	201	83	313	98	165	76	882	168	364	106	716	151
Bangor, Maine	663	152			242	101	1,075	180	1,179	189	1,046	178	896	168	[1] 1,209	194	278	110	458	131	871	167	808	169	1,380	212	834	[1] 234	1,213	193
Boston, Mass.	428	114	242	101			840	155	973	169	837	158	708	143	[1] 1,010	174	202	95	247	95	663	139	573	132	1,174	193	328	101	936	173
Charleston, W. Va.	432	[1] 110	1,075	180	840	155			460	119	211	84	358	103	275	101	903	155	673	133	290	96	365	106	548	130	599	132	386	109
Chicago, Ill.	767	154	1,179	189	973	169	460	119			250	90	267	92	291	96	948	169	890	167	454	117	825	156	278	92	645	138	177	77
Dayton, Ohio	535	125	1,046	178	837	158	211	84	250	90			199	80	164	77	812	158	660	145	254	90	576	129	349	103	508	121	182	70
Detroit, Mich.	398	132	896	168	708	143	358	103	267	92	199	80			[1] 854	103	657	143	632	135	291	96	707	143	475	119	379	106	321	101
Louisville, Ky.	682	145	[1] 1,209	194	[1] 1,010	174	275	101	291	96	164	77	[1] 354	103			[1] 976	174	[1] 835	164	[1] 426	114	697	144	697	143	294	92	[1] 673	141	156	74
Montpelier, Vt.	530	134	278	110	202	95	903	155	948	169	812	158	657	143	[1] 976	174			329	112	652	141	676	153	1,150	193	318	105	916	173
New York, N. Y.	201	83	458	131	247	95	613	133	890	167	660	145	632	135	[1] 835	164	329	112			436	114	346	103	1,040	184	280	92	571	167
Pittsburgh, Pa.	313	98	871	167	663	139	290	96	454	117	254	90	291	96	[1] 426	114	652	141	436	114			416	111	604	138	370	106	435	114
Richmond, Va.	165	76	808	169	573	132	365	106	825	156	576	129	707	143	697	144	676	153	346	103	416	111			909	169	510	124	751	152
St. Louis, Mo.	882	168	1,380	212	1,174	193	542	130	278	92	349	103	475	119	294	92	1,150	193	1,040	184	604	138	909	169			846	160	169	76
Syracuse, N. Y.	364	106	534	134	328	101	599	132	645	138	508	121	379	106	[1] 673	141	318	105	280	92	370	106	510	124	846	160			677	141
Terre Haute, Ind.	716	151	1,213	193	936	173	386	109	177	77	182	79	321	101	156	74	910	173	871	167	435	114	751	152	168	76	677	141		

[1] Short-line distance computed partially over Louisville & Nashville Railroad.

TABLE I.—*Intraterritorially*—Continued

Between southern territory	And southern territory																							
	Atlanta, Ga.			Charleston, S. C.			Jackson, Miss.			Jacksonville, Fla.			Johnson City, Tenn.			Louisville, Ky.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Atlanta, Ga.				308	139	98	414	160	111	331	143	101	302	139	98	451	167	117
Charleston, S. C.	308	139	98				678	202	145	232	121	87	379	152	106	689	206	149
Jackson, Miss.	414	160	111	678	202	145				584	189	135	609	193	138	564	89	132
Jacksonville, Fla.	331	143	101	232	121	87	584	189	135				527	179	128	782	219	160
Johnson City, Tenn.	302	139	98	379	152	106	609	193	138	527	179	128				347	147	103
Louisville, Ky.	451	166	117	689	206	149	564	186	132	782	219	160	347	147	103			
Memphis, Tenn.	417	160	111	725	212	153	211	117	84	662	202	145	530	179	128	377	149	106
Miami, Fla.	681	230	149	598	212	135	927	266	176	366	175	106	863	[1] 259	171	1,130	261	168
Montgomery, Ala.	172	106	77	430	163	114	248	125	90	336	143	101	453	166	117	489	173	122
Nashville, Tenn.	280	134	96	597	189	135	410	160	111	630	193	138	322	152	101	187	106	79
New Orleans, La.	490	173	122	748	216	155	180	106	77	608	193	138	715	209	151	747	216	155
Raleigh, N. C.	415	163	111	247	125	90	825	229	163	472	169	119	329	143	101	667	171	145

TABLE I—*Intraterritorially*—Continued

Between southern territory	And southern territory: Memphis, Tenn.			Miami, Fla.			Montgomery, Ala.			Nashville, Tenn.			New Orleans, La.			Raleigh, N. C.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Atlanta, Ga	417	100	111	681	230	149	172	106	77	289	134	96	490	173	122	415	163	111
Charleston, S. C	725	212	153	598	212	135	430	163	114	597	189	135	748	216	155	247	125	90
Jackson, Miss	211	117	84	927	266	176	248	125	90	410	160	111	180	106	77	825	229	163
Jacksonville, Fla	667	202	145	366	175	106	336	143	101	620	193	138	608	193	138	472	169	119
Johnson City, Tenn	530	179	128	893	[1] 259	171	453	166	117	322	152	101	715	209	151	329	143	101
Louisville, Ky	377	149	106	1,130	293	198	489	173	122	187	109	79	747	216	155	667	171	145
Memphis, Tenn				1,008	276	185	331	143	101	220	119	86	391	156	109	823	226	163
Miami, Fla	1,008	276	185				677	227	145	970	270	179	917	264	174	868	252	165
Montgomery, Ala	331	143	101	677	227	145				302	139	98	318	139	98	587	189	135
Nashville, Tenn	220	119	86	970	270	179	302	139	98				559	183	130	614	202	138
New Orleans, La	391	156	109	917	264	174	318	139	98	559	183	130				905	239	174
Raleigh, N. C	823	226	163	838	252	165	587	189	135	614	202	138	905	239	174			

[1] Rate applicable north-bound; south-bound rate is 257 cents.

Between western trunk-line territory	And western trunk-line territory: Aberdeen, S. Dak.			Alliance, Nebr.			Cedar Rapids, Iowa			Denver, Colo.			Duluth, Minn.			Fargo, N. Dak.			Green Bay, Wis.			Kansas City, Mo.			Kearney, Nebr.			Minneapolis, Minn.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Aberdeen, S. Dak				526	205	128	461	165	119	765	257	157	364	151	106	152	100	74	561	190	132	550	185	130	495	177	122	273	131	92
Alliance, Nebr	526	205	128				657	220	143	238	133	87	865	267	168	677	235	145	955	268	179	548	204	130	260	138	90	715	233	151
Cedar Rapids, Iowa	461	165	119	657	220	143				787	248	160	381	133	109	475	167	119	329	121	101	290	117	96	430	158	114	244	105	90
Denver, Colo	765	257	157	238	133	87	787	248	160				994	279	182	915	283	174	1,085	293	193	620	222	138	357	163	108	845	257	165
Duluth, Minn	364	151	106	865	267	168	381	133	109	994	279	182				252	125	90	300	117	96	623	180	141	638	200	141	[1] 80	[1] 80	73
Fargo, N. Dak	152	100	74	677	235	145	475	167	119	915	283	174	252	125	90				519	175	124	669	206	145	614	202	138	232	119	87
Green Bay, Wis	561	190	132	955	268	179	329	121	101	1,085	293	193	300	117	96	519	175	124				590	169	135	728	215	153	288	117	96
Kansas City, Mo	550	185	130	548	204	130	290	117	96	620	222	138	623	180	141	669	206	145	590	169	135				294	134	96	478	153	119
Kearney, Nebr	495	177	122	260	138	90	430	158	114	357	163	103	538	200	141	614	202	138	728	215	153	294	134	96				488	172	122
Minneapolis, Minn	273	131	92	715	233	151	244	105	90	845	247	165	150	[1] 80	73	232	119	87	288	117	96	478	153	119	488	172	122			
Minot, N. Dak	264	143	92	791	261	180	708	227	151	1,028	308	187	486	185	122	233	129	87	752	232	155	815	249	163	760	244	155	465	180	119
Omaha, Nebr	365	150	106	413	173	111	257	109	90	538	202	128	486	156	122	483	171	122	557	168	130	191	95	80	186	109	79	341	130	103
Rapid City, S. Dak	347	160	103	178	117	77	653	219	143	416	177	111	676	229	145	499	190	122	838	256	168	708	228	151	438	183	114	570	208	132
St. Louis, Mo	738	212	153	809	248	163	290	112	96	890	268	171	671	179	145	765	216	157	456	123	117	272	113	92	566	190	132	534	160	128
Sault Ste. Marie, Mich	767	226	157	1,208	306	207	602	173	138	1,[illegible]	[illegible]	220	409	141	111	656	205	143	273	113	92	883	217	168	980	252	182	491	156	122
Scott City, Kans	799	250	160	570	216	132	666	218	145	332	157	101	943	265	176	919	271	174	977	263	182	374	164	106	410	178	111	793	244	160
Sioux Falls, S. Dak	182	109	79	545	202	130	303	121	98	674	237	145	343	147	103	306	139	98	501	156	124	373	133	106	316	136	98	227	105	86
Springfield, Mo	742	221	155	719	238	151	442	156	117	733	246	153	797	221	160	861	238	168	698	201	149	192	111	80	464	174	119	653	199	143
Trinidad, Colo	973	295	179	447	187	117	908	272	174	209	125	83	1,162	312	201	1,124	320	196	1,207	312	207	617	222	138	585	216	132	1,012	290	185
Wichita, Kans	657	218	143	538	200	128	491	176	122	512	201	124	789	230	160	776	229	157	790	224	160	200	117	80	284	140	96	645	208	143

[1] Rate applicable on less than carloads of less than 6,000 pounds; on less than carloads of greater weight and on carloads rate is 64 cents.

52 I. C. C.
648612—43—No. 148——20

TABLE I—*Intraterritorially*—Continued

Between western trunk-line territory and	Minot, N. Dak.			Omaha, Nebr.			Rapid City, S. Dak.			St. Louis, Mo.			Sault Ste. Marie, Mich.			Scott City, Kans.			Sioux Falls, S. Dak.			Springfield, Mo.			Trinidad, Colo.			Wichita, Kans.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Aberdeen, S. Dak	264	143	92	365	150	106	347	160	103	738	212	153	767	326	157	799	250	160	182	109	79	742	221	158	973	295	179	657	218	143
Alliance, Nebr	791	261	160	413	173	111	178	117	77	809	248	163	1,208	306	207	570	216	132	545	202	130	719	238	151	447	187	117	538	209	128
Cedar Rapids, Iowa	708	227	151	257	109	90	653	219	143	290	112	96	602	173	138	666	218	145	303	121	98	442	156	117	908	272	174	491	176	122
Denver, Colo	1,028	308	187	538	202	128	416	177	111	890	268	171	1,357	332	220	332	157	101	674	232	145	733	246	153	209	125	83	512	201	124
Duluth, Minn	486	185	122	486	156	122	676	229	145	671	179	145	409	141	111	943	265	176	343	147	103	797	221	160	1,162	312	201	789	230	160
Fargo, N. Dak	233	129	87	483	171	122	499	190	122	765	216	157	656	205	143	919	271	174	306	139	98	861	238	168	1,124	320	196	776	239	157
Ofeen Bay, Wis	752	242	155	557	168	130	858	256	168	458	123	117	273	113	92	977	263	182	501	156	124	698	201	149	1,207	312	207	790	224	160
Kansas City, Mo	815	249	168	191	95	80	708	228	151	272	113	92	863	217	168	374	164	106	373	133	106	192	111	80	617	222	138	200	117	80
Kearney, Nebr	760	244	155	186	109	79	438	183	114	566	190	132	980	252	182	410	173	111	318	136	98	464	174	119	565	216	132	284	140	96
Minneapolis, Minn	465	189	119	341	130	103	570	208	132	534	160	128	491	156	122	793	244	160	227	105	86	653	198	143	1,012	290	185	645	208	143
Minot, N. Dak				630	219	141	612	222	138	908	265	182	888	264	171	1,064	304	190	447	182	117	1,007	277	185	1,237	345	209	922	274	174
Omaha, Nebr	630	219	141				523	197	128	413	141	111	822	215	163	457	182	117	188	95	79	385	145	109	694	241	149	315	144	98
Rapid City, S. Dak	612	222	138	523	197	128				919	256	174	1,061	287	190	749	256	155	358	160	103	900	261	171	625	230	141	727	243	151
St. Louis, Mo	998	265	182	413	141	111	919	256	174				731	193	153	638	220	141	564	167	132	239	87	87	878	267	171	457	172	117
Sault Ste. Marie, Mich	889	254	171	822	215	163	1,061	287	190	731	193	153				1,250	305	209	723	199	153	971	245	179	1,480	354	237	1,063	267	190
Scott City, Kans	1,064	304	190	457	182	117	749	256	155	638	220	141	1,250	305	209				622	219	141	468	186	119	271	143	92	220	128	84
Sioux Falls, S. Dak	447	182	117	188	95	79	358	160	103	564	167	132	723	199	153	622	219	141				565	180	132	842	264	165	480	178	119
Springfield, Mo	1,007	277	185	385	145	109	990	261	171	239	87	87	971	245	179	468	186	119	565	180	132				701	241	151	259	131	90
Trinidad, Colo	1,237	345	209	694	241	149	625	230	141	878	267	171	1,480	354	237	271	143	92	842	264	165	701	241	151				446	187	117
Wichita, Kans	922	274	174	318	143	98	717	243	151	457	172	117	1,063	267	190	220	128	84	490	178	119	259	131	90	446	187	117			

Between southwestern territory and	And southern territory																				
	Alpine, Tex.			Amarillo, Tex.			Brownsville, Tex.			Dallas, Tex.			El Paso, Tex.			Houston, Tex.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Alpine, Tex				540	211	130	676	240	145	497	196	122	221	132	86	509	220	135
Amarillo, Tex	546	211	130				873	277	168	367	168	106	444	184	117	596	220	135
Brownsville, Tex	676	240	145	873	277	168				541	211	130	897	282	171	358	163	103
Dallas, Tex	497	196	122	367	168	106	541	211	130				646	235	143	242	139	90
El Paso, Tex	221	132	86	444	184	117	897	282	171	646	235	143				820	268	163
Houston, Tex	509	220	135	596	220	135	358	163	103	242	139	90	820	268	163			
Little Rock, Ark	828	273	165	627	230	141	794	263	160	332	158	101	976	300	182	433	187	114
Memphis, Tenn	990	294	179	760	253	155	912	265	174	463	193	119	1,108	322	196	554	239	130
New Orleans, La	948	288	176	853	271	168	708	245	151	491	200	122	1,135	325	198	349	157	103
Oklahoma City, Okla	609	225	138	274	144	92	742	256	155	228	132	86	718	248	151	465	192	119
San Antonio, Tex	393	172	109	587	220	135	286	148	96	275	144	92	815	225	138	206	127	83
Shreveport, La	688	244	149	553	211	130	591	220	135	191	124	80	836	273	165	232	139	87
Sweetwater, Tex	304	153	98	242	139	90	636	230	141	233	134	87	412	177	111	408	177	111

Between southwestern territory	Little Rock, Ark.			Memphis, Tenn.			New Orleans, La.			Oklahoma City, Okla.			San Antonio, Tex.			Shreveport, La.			Sweetwater, Tex.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Alpine, Tex	828	273	165	960	294	179	948	288	176	609	225	138	393	172	109	688	244	149	304	153	98
Amarillo, Tex	627	230	141	760	253	155	853	271	168	274	144	92	587	220	135	553	211	130	242	139	90
Brownsville, Tex	194	263	160	912	285	174	708	245	151	742	256	158	286	148	96	591	220	135	636	230	141
Dallas, Tex	332	158	101	463	193	119	491	200	122	228	132	86	276	144	92	191	124	80	233	134	87
El Paso, Tex	976	300	182	1,108	322	196	1,136	325	198	718	248	151	615	225	138	536	273	165	412	177	111
Houston, Tex	435	187	114	554	209	130	349	157	103	465	192	119	206	127	83	232	139	87	408	177	111
Little Rock, Ark				133	103	70	437	174	114	353	163	103	575	216	132	203	127	83	564	216	132
Memphis, Tenn	133	103	70				(1)	(1)	(1)	485	193	122	706	245	151	321	154	101	696	241	149
New Orleans, La	437	174	114	(1)	(1)	(1)				670	234	145	553	206	130	306	149	98	724	246	153
Oklahoma City, Okla	353	163	103	485	193	122	670	234	145				477	192	119	369	168	106	308	153	98
San Antonio, Tex	575	216	132	706	245	151	553	206	130	477	192	119				402	177	111	349	163	103
Shreveport, La	203	127	83	321	154	101	306	149	98	369	168	105	402	177	111				424	182	114
Sweetwater, Tex	564	216	132	696	241	149	724	246	153	308	153	98	349	163	103	424	182	114			

[1] Shown in table of distances and rates between points in southern territory.

TABLE II.—*Intraterritorially*

Between official territory	And southern territory														
	Atlanta, Ga.			Charleston, S. C.			Jackson, Miss.			Jacksonville, Fla.			Johnson City, Tenn.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Baltimore, Md	686	196	149	560	169	130	1,060	253	190	792	204	160	449	121	117
Bangor, Maine	1,335	252	220	1,201	228	207	1,702	303	262	1,434	259	231	1,092	204	193
Boston, Mass	1,094	230	193	968	206	179	1,467	282	234	1,199	238	204	857	174	168
Charleston, W. Va	553	186	130	899	188	135	841	232	165	809	226	163	290	105	96
Chicago, Ill	728	210	153	968	249	182	738	206	153	1,039	253	190	638	166	141
Dayton, Ohio	529	183	128	758	215	155	728	209	153	860	239	168	416	134	111
Detroit, Mich	728	211	153	931	234	176	804	232	174	1,052	266	190	596	154	135
Montpelier, Vt	1,197	248	204	1,078	223	193	1,520	299	245	1,297	255	215	960	191	179
New York, N. Y	873	212	168	740	197	153	1,240	267	209	972	220	179	630	147	141
Pittsburgh, Pa	773	229	157	791	207	160	973	241	179	1,018	239	185	533	144	128
Richmond, Va	542	183	130	404	156	109	958	248	179	621	187	141	352	105	103
St. Louis, Mo	609	193	138	917	244	174	517	178	124	915	245	174	611	174	138
Syracuse, N. Y	1,029	235	187	914	212	174	1,237	270	209	1,131	244	198	752	163	155
Terre Haute, Ind	553	187	130	845	234	165	580	186	132	885	240	171	503	154	124

And southbound traffic to Miami, Fla.

Between official territory		Memphis, Tenn.	Miami, Fla.	Montgomery, Ala.	Nashville, Tenn.	New Orleans, La.	Raleigh, N. C.
Baltimore, Md	Distance	971	1,132	838	771	1,164	322
	Present rate	294	329	1,501	1,204	282	117
	Eastern scale	179	201	240	274	312	70
Bangor, Maine	Distance	1,578	1,764	1,357	1,180	1,572	730
	Present rate	1,269	1,500	1,975	1,451	290	167
	Eastern scale	248	307	280	440	245	117
Boston, Mass	Distance	1,372	1,175	1,144	1,094	1,572	730
	Present rate	641	1,409	570	1,180	290	167
	Eastern scale	190	296	240	451	245	117
Charleston, W. Va	Distance	562	1,210	1,370	1,164	1,345	811
	Present rate	164	333	834	832	1,675	761
	Eastern scale	157	229	541	541	1,060	157
Chicago, Ill	Distance	547	1,409	1,370	1,164	1,345	811
	Present rate	157	329	834	832	1,675	761
	Eastern scale	130	229	541	541	1,060	157
Dayton, Ohio	Distance	703	1,409	1,370	1,164	1,345	811
	Present rate	190	329	834	832	1,675	761
	Eastern scale	151	229	541	541	1,060	157
Detroit, Mich	Distance	1,349	1,663	1,370	1,164	1,345	811
	Present rate	294	329	834	832	1,675	761
	Eastern scale	220	229	541	541	1,060	157
Montpelier, Vt	Distance	1,190	1,333	1,370	1,164	1,345	811
	Present rate	252	329	834	832	1,675	761
	Eastern scale	201	229	541	541	1,060	157
New York, N. Y	Distance	785	1,370	1,370	1,164	1,345	811
	Present rate	200	329	834	832	1,675	761
	Eastern scale	160	229	541	541	1,060	157
Pittsburgh, Pa	Distance	578	1,251	1,370	1,164	1,345	811
	Present rate	235	329	834	832	1,675	761
	Eastern scale	171	229	541	541	1,060	157
Richmond, Va	Distance	296	1,251	1,370	1,164	1,345	811
	Present rate	136	329	834	832	1,675	761
	Eastern scale	96	229	541	541	1,060	157
St. Louis, Mo	Distance	1,044	1,497	1,370	1,164	1,345	811
	Present rate	231	329	834	832	1,675	761
	Eastern scale	157	229	541	541	1,060	157
Syracuse, N. Y	Distance	1,044	1,497	1,370	1,164	1,345	811
	Present rate	231	329	834	832	1,675	761
	Eastern scale	157	229	541	541	1,060	157
Terre Haute, Ind	Distance	378	1,234	1,370	1,164	1,345	811
	Present rate	144	329	834	832	1,675	761
	Eastern scale	106	229	541	541	1,060	157

[1] Combination rate.

TABLE II.—*Interterritorially*—Continued

And western trunk-line territory.

Between official territory		Aberdeen, S. Dak.	Alliance, Nebr.	Cedar Rapids, Iowa	Denver, Colo.	Duluth, Minn.	Fargo, N. Dak.	Green Bay, Wis.	Kansas City, Mo.	Kearney, Nebr.	Minneapolis, Minn.
Baltimore, Md	Distance	422	1,626	979	1,743	1,194	1,302	909	1,134	1,309	1,153
	Present rate	205	345	193	371	237	298	172	234	286	233
	Eastern scale	229	253	182	264	264	226	172	198	226	201
Bangor, Maine	Distance	1,745	2,055	1,808	2,182	2,071	2,706	1,967	1,605	1,829	1,469
	Present rate	337	303	232	420	314	325	196	264	337	272
	Eastern scale	264	300	226	430	414	325	196	251	276	234
Boston, Mass	Distance	1,537	1,849	1,192	1,976	1,676	2,493	1,697	1,399	1,622	1,263
	Present rate	315	371	204	368	250	303	175	263	316	250
	Eastern scale	242	275	145	292	215	257	152	226	251	212
Charleston, W. Va	Distance	1,127	1,300	1,413	1,066	913	1,631	1,091	803	1,074	861
	Present rate	256	304	227	229	206	252	153	193	245	199
	Eastern scale	196	215	145	159	174	193	143	143	190	155
Chicago, Ill	Distance	661	876	667	1,066	453	1,091	496	435	649	401
	Present rate	201	254	219	279	151	196	87	114	197	139
	Eastern scale	145	171	84	159	117	141	80	117	143	111
Dayton, Ohio	Distance	871	1,096	457	1,270	619	1,302	633	659	909	630
	Present rate	229	278	193	309	196	226	121	165	225	175
	Eastern scale	168	193	132	204	138	171	101	128	168	133
Detroit, Mich	Distance	932	1,142	485	1,335	743	1,465	439	537	830	692
	Present rate	240	285	144	305	196	234	111	136	165	185
	Eastern scale	176	196	119	201	155	174	101	126	149	149
Louisville, Ky	Distance	1,097	1,167	472	1,554	1,139	1,383	833	1,382	1,507	1,221
	Present rate	261	273	212	308	290	302	177	263	315	290
	Eastern scale	193	211	144	201	196	226	122	179	248	207
Montpelier, Vt	Distance	1,524	1,764	1,106	1,886	1,205	1,422	1,039	1,268	1,527	1,153
	Present rate	371	360	204	385	239	294	220	248	303	239
	Eastern scale	273	267	196	281	207	254	172	215	242	204
New York, N. Y	Distance	1,404	1,764	1,106	1,886	1,205	1,422	1,039	1,268	1,527	1,153
	Present rate	315	360	204	385	239	294	220	248	303	239
	Eastern scale	234	267	196	281	207	254	172	215	242	204
Pittsburgh, Pa	Distance	1,466	1,764	1,106	1,886	1,205	1,422	1,039	1,268	1,527	1,153
	Present rate	304	360	204	385	239	294	220	248	303	239
	Eastern scale	237	267	196	281	207	254	172	215	242	204
Richmond, Va	Distance	1,115	1,329	673	1,451	881	1,079	1,013	832	1,092	649
	Present rate	256	308	161	232	200	254	176	197	251	196
	Eastern scale	196	220	145	231	171	215	145	169	196	163
Syracuse, N. Y	Distance	1,486	1,666	1,096	1,778	1,278	1,496	1,209	1,234	1,292	1,226
	Present rate	304	350	196	371	270	315	176	185	231	241
	Eastern scale	237	256	187	270	215	256	176	185	231	209
Terre Haute, Ind	Distance	1,269	1,521	864	1,498	1,048	1,646	1,262	1,074	1,294	1,036
	Present rate	274	330	177	358	253	358	201	221	273	215
	Eastern scale	207	249	158	253	196	253	201	196	215	209
	Distance	795	947	335	1,040	629	1,040	374	430	575	575
	Present rate	220	262	118	284	177	284	110	139	210	164
	Eastern scale	160	176	101	187	141	187	106	114	151	132

And western trunk-line territory

Between official territory		Minot, N. Dak.		Omaha, Nebr.		Rapid City, S. Dak.		Sault Ste. Marie, Mich.		Scott City, Kans.		Sioux Falls, S. Dak.		Springfield, Mo.		Trinidad, Colo.		Wichita, Kans.	
		Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate
Baltimore, Md	Eastern scale	1,618	340	1,220	244	1,630	347	936	185	1,007	328	1,280	255	1,130	243	1,750	371	1,333	285
Bangor, Maine		1,838	475	1,654	330	1,967	357	1,262	205	1,578	360	1,647	267	1,619	310	2,227	420	1,894	395
Boston, Mass		1,726	353	1,446	306	1,791	368	1,170	187	1,422	358	1,441	275	1,413	266	2,015	396	1,586	314
Charleston, W. Va		1,324	304	1,043	206	1,328	306	1,020	167	1,132	264	1,077	218	1,031	206	1,630	327	1,299	242
Chicago, Ill		964	264	693	171	966	253	471	154	810	246	762	179	709	179	1,053	286	1,036	230
Dayton, Ohio		1,113	279	840	190	1,110	289	654	149	1,067	279	1,026	196	969	196	1,310	317	1,189	267
Detroit, Mich		1,094	266	821	190	1,107	279	655	178	1,052	256	1,015	196	1,000	196	1,344	300	1,172	215
Louisville, Ky		1,165	286	911	190	1,125	283	721	187	1,135	256	1,088	157	1,063	157	1,444	300	1,221	215
Montpelier, Vt		1,617	353	1,434	306	1,765	368	1,170	187	1,422	358	1,441	275	1,413	266	2,015	396	1,586	314
New York, N. Y		1,655	345	1,361	289	1,718	356	1,097	187	1,349	343	1,369	264	1,341	264	1,969	396	1,539	314
Pittsburgh, Pa		1,311	303	1,029	207	1,325	307	1,020	167	1,132	264	1,077	218	1,031	206	1,630	327	1,299	242
Richmond, Va		1,659	351	1,376	282	1,695	357	1,094	187	1,406	358	1,415	275	1,388	266	1,994	396	1,563	314
Syracuse, N. Y		1,388	312	1,104	230	1,464	328	1,094	187	1,406	358	1,415	275	1,388	266	1,994	396	1,563	314
Terre Haute, Ind		1,038	270	1,104	230	1,464	328	1,094	187	1,406	358	1,415	275	1,388	266	1,994	396	1,563	314
	Eastern scale		167		162		206		135		163		177		153		187		195

TABLE II.—*Intraterritorially*—Continued

And southwestern territory

Between official territory		Alpine, Tex.		Amarillo, Tex.		Brownsville, Tex.		Dallas, Tex.		El Paso, Tex.	
		Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate	Distance	Present rate
Baltimore, Md	Eastern scale	1,928	438	1,664	339	1,848	429	1,432	325	2,078	483
Bangor, Maine		2,146	497	2,131	411	2,462	494	2,000	344	2,557	632
Boston, Mass		2,220	471	1,925	369	2,256	496	1,784	322	2,330	549
Charleston, W. Va		1,610	360	1,320	315	1,952	381	1,114	265	1,724	409
Chicago, Ill		1,365	348	962	259	1,367	355	904	231	1,243	316
Dayton, Ohio		1,496	357	1,135	288	1,532	369	1,116	270	1,635	409
Detroit, Mich		1,612	381	1,219	300	1,632	379	970	231	1,543	367
Montpelier, Vt		2,269	471	1,912	369	2,235	499	1,772	319	2,344	549
New York, N. Y		2,121	456	1,815	373	2,092	479	1,635	295	2,243	549
Pittsburgh, Pa		1,720	401	1,380	329	1,796	413	1,224	284	1,842	449
Richmond, Va		1,635	435	1,275	305	1,696	393	1,224	284	1,842	449
Syracuse, N. Y		1,962	430	1,607	330	1,749	415	1,342	305	1,966	479
Terre Haute, Ind		1,962	384	1,607	306	1,926	425	1,342	305	1,966	479
	Eastern scale	1,206	344	931	215	1,262	342	900	212	1,363	329

Between official territory	Houston, Tex.			Little Rock, Ark.			Oklahoma City, Okla.			San Antonio, Tex.			Shreveport, La.			Sweetwater, Tex.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Baltimore, Md	1,490	358	237	1,101	270	196	1,423	315	229	1,675	386	256	1,289	310	218	1,664	377	256
Bangor, Maine	2,103	413	306	1,669	328	256	1,914	367	284	2,242	443	319	1,871	370	278	2,222	432	317
Boston, Mass	1,897	391	281	1,463	306	234	1,708	345	262	2,036	421	297	1,665	348	256	2,016	410	295
Charleston, W. Va	1,204	304	207	783	223	160	1,081	268	193	1,357	338	223	972	263	179	1,346	330	220
Chicago, Ill	1,035	286	187	604	195	138	776	230	157	1,174	311	201	805	239	163	1,061	290	190
Dayton, Ohio	1,073	290	190	639	200	141	892	244	171	1,282	318	207	841	242	165	1,200	306	204
Detroit, Mich	1,219	309	207	784	222	160	1,006	259	185	1,358	338	223	987	262	182	1,314	321	218
Montpelier, Vt	1,876	391	278	1,442	306	231	1,687	345	259	2,015	421	295	1,644	348	253	1,995	410	292
New York, N. Y	1,669	374	256	1,294	287	215	1,581	331	248	1,866	405	278	1,482	328	237	1,857	396	278
Pittsburgh, Pa	1,327	322	220	893	235	171	1,145	277	198	1,466	350	234	1,095	275	193	1,453	340	234
Richmond, Va	1,381	342	226	1,011	270	183	1,364	321	223	1,571	382	245	1,169	305	201	1,574	385	245
Syracuse, N. Y	1,568	352	245	1,135	266	198	1,380	305	226	1,708	382	262	1,337	307	220	1,668	370	259
Terre Haute, Ind	903	270	174	469	174	119	710	221	251	1,042	297	187	670	219	145	1,018	285	185

TABLE II.—*Intraterritorially*—Continued

Between southern territory	And western trunk-line territory																							
	Aberdeen, S. Dak.			Alliance, Nebr.			Cedar Rapids, Iowa			Denver, Colo.			Duluth, Minn.			Fargo, N. Dak.			Green Bay, Wis.			Kansas City, Mo.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Atlanta, Ga	1,317	309	218	1,415	343	229	860	233	168	1,432	364	231	1,177	277	204	1,330	310	220	924	241	174	879	240	171
Charleston, S. C	1,615	358	251	1,723	399	262	1,156	289	201	1,740	416	264	1,427	322	231	1,608	355	251	1,174	279	201	1,187	294	204
Jackson, Miss	1,216	298	207	1,200	326	204	792	223	160	1,213	340	207	1,137	271	198	1,266	303	212	930	238	176	674	228	145
Jacksonville, Fla	1,638	364	253	1,665	403	256	1,191	293	204	1,682	416	259	1,508	334	240	1,661	369	256	1,255	299	212	1,130	294	198
Johnson City, Tenn	1,276	297	215	1,419	340	229	817	206	163	1,502	361	240	1,088	261	193	1,269	294	212	835	210	165	883	238	171
Miami, Fla	1,979	443	292	2,006	481	295	1,533	363	242	2,023	498	295	1,857	416	278	2,007	449	295	1,604	375	251	1,471	374	234
Montgomery	1,302	306	218	1,329	341	220	856	233	168	1,346	352	220	1,190	281	204	1,330	311	220	937	243	176	794	235	160
Nashville, Tenn	1,028	257	187	1,126	294	198	571	171	132	1,208	314	207	888	224	171	1,041	264	187	635	180	141	590	184	135
Raleigh, N. C	1,520	325	240	1,695	365	259	1,066	237	190	1,809	393	273	1,311	279	218	1,492	320	237	1,058	223	190	1,199	262	204

Between southern territory	And western trunk-line territory								
	Kearney, Nebr.			Minneapolis Minn.					
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale			
Atlanta, Ga	1,160	294	201	1,094	270	193			
Charleston, S. C	1,468	348	234	1,372	315	223			
Jackson, Miss	945	281	176	1,030	262	187			
Jacksonville, Fla	1,410	350	229	1,425	328	229			
Johnson City, Tenn	1,176	289	204	1,033	251	187			
Miami, Fla	1,751	428	267	1,771	409	267			
Montgomery	1,674	288	190	1,094	272	193			
Nashville, Tenn	883	244	171	805	216	163			
Raleigh, N. C	1,469	311	234	1,256	278	212			

Between southern territory

		Minot, N. Dak.	Omaha, Nebr.	Rapid City, S. Dak.	Sault Ste. Marie, Mich.	Scott City, Kans.	Sioux Falls, S. Dak.	Springfield, Mo.	Trinidad, Colo.	Wichita, Kans.
Atlanta, Ga.	Distance	1,803	1,019	1,008	1,079	1,151	1,088	1,088	1,088	1,088
	Present rate	249	201	233	268	221	279	236	236	236
	Eastern scale	245	195	225	260	214	270	228	228	228
Charleston, S. C.	Distance	1,840	1,827	1,800	1,906	1,473	1,459	1,106	1,106	1,106
	Present rate	254	316	406	263	272	267	236	236	236
	Eastern scale	273	240	340	276	283	257	228	228	228
Jackson, Miss.	Distance	1,680	856	1,513	1,176	918	1,089	636	636	636
	Present rate	351	240	333	314	263	257	216	216	216
	Eastern scale	337	231	321	303	253	247	208	208	208
Jacksonville, Fla.	Distance	1,804	1,312	1,534	1,410	1,415	1,471	1,121	1,121	1,121
	Present rate	418	316	411	378	333	353	270	270	270
	Eastern scale	391	295	384	353	311	330	252	252	252
Johnson City, Tenn.	Distance	1,601	1,022	1,570	1,240	1,240	1,299	1,299	1,299	1,299
	Present rate	343	266	344	313	314	329	329	329	329
	Eastern scale	340	263	341	310	311	326	326	326	326
Miami, Fla.	Distance	2,240	1,633	2,166	1,780	1,750	1,812	1,462	1,462	1,462
	Present rate	454	363	480	403	447	414	333	333	333
	Eastern scale	419	336	444	373	414	383	308	308	308
Montgomery, Ala.	Distance	1,263	970	1,231	1,144	1,079	1,135	1,135	1,135	1,135
	Present rate	359	330	351	276	306	279	279	279	279
	Eastern scale	345	317	337	265	294	268	268	268	268
Nashville, Tenn.	Distance	1,274	720	1,216	842	1,178	1,235	1,235	1,235	1,235
	Present rate	326	296	304	274	306	279	279	279	279
	Eastern scale	313	284	292	263	294	268	268	268	268
Raleigh, N. C.	Distance	1,734	1,212	1,719	1,110	1,595	1,652	1,302	1,302	1,302
	Present rate	369	289	372	334	345	357	326	326	326
	Eastern scale	362[1]	278	357	321	331	343	313	313	313

[1] Also western transcontinental territory.

TABLE II.—*Intraterritorially*—Continued

Between southern territory

And southwestern territory

		Alpine, Tex.	Amarillo, Tex.	Brownsville, Tex.	Del Rio, Tex.	El Paso, Tex.
Atlanta, Ga.	Distance	1,319	1,177	1,196	1,022	1,457
	Present rate	355	328	373	281	396
	Eastern scale	334	309	351	265	373
Charleston, S. C.	Distance	1,965	1,490	1,456	1,330	1,723
	Present rate	366	373	376	366	431
	Eastern scale	345	351	354	345	406
Jackson, Miss.	Distance	903	770	765	636	1,054
	Present rate	264	327	330	263	310
	Eastern scale	249	308	311	248	292
Jacksonville, Fla.	Distance	1,691	1,260	1,316	1,089	1,454
	Present rate	327	340	330	263	310
	Eastern scale	308	321	311	248	292
Johnson City, Tenn.	Distance	1,680	1,260	1,316	1,089	1,454
	Present rate	350	340	330	263	310
	Eastern scale	330	321	311	248	292
Louisville, Ky.	Distance	1,357	1,047	1,095	1,089	1,454
	Present rate	350	281	342	263	310
	Eastern scale	330	265	322	248	292
Miami, Fla.	Distance	1,832	1,607	1,635	1,089	1,454
	Present rate	430	430	434	263	310
	Eastern scale	405	405	409	248	292
Montgomery, Ala.	Distance	1,155	1,030	1,095	1,089	1,454
	Present rate	327	327	342	263	310
	Eastern scale	308	308	322	248	292
Nashville, Tenn.	Distance	1,165	1,030	1,095	1,089	1,454
	Present rate	327	327	342	263	310
	Eastern scale	308	308	322	248	292
Raleigh, N. C.	Distance	1,734	1,563	1,619	1,443	1,807
	Present rate	436	398	404	366	431
	Eastern scale	411	375	381	345	406

Between southern territory	Houston, Tex.			Little Rock, Ark.			Oklahoma City, Okla.			San Antonio, Tex.			Shreveport, La.			Sweetwater, Tex.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Atlanta, Ga	639	260	165	840	190	130	1,032	272	174	1,033	299	187	631	219	141	1,056	306	196
Charleston, S. C	1,077	301	146	1,067	257	169	1,210	322	207	1,269	341	215	897	266	171	1,321	361	218
Jackson, Miss	431	179	114	587	136	89	986	262	168	1,163	319	201	617	217	84	941	252	143
Jacksonville, Fla	967	275	175	789	206	134	1,152	306	196	1,227	334	209	825	287	127	1,227	324	209
Johnson City, Tenn	1,030	286	157	1,140	298	180	1,015	296	185	1,063	301	188	1,144	398	251	1,226	340	209
Louisville, Ky	800	274	176	809	226	145	816	256	163	1,471	396	253	1,144	322	204	1,071	301	190
Miami, Fla	1,266	352	212	1,140	319	204	1,403	366	227	1,468	394	251	1,144	322	204	1,068	301	190
Montgomery, Ala	667	228	145	843	236	150	816	256	163	1,468	394	251	1,144	322	204	1,068	301	190
Nashville, Tenn	763	226	100	843	236	150	715	234	151	1,468	394	251	1,144	322	204	1,068	301	190
Raleigh, N. C	1,260	330	213	1,052	270	170	1,308	332	213	1,446	370	231	1,046	292	187	1,470	378	234

TABLE II.—*Intraterritorially*—Continued.

And southwestern territory

Between western trunk line territory	Alpine, Tex.			Amarillo, Tex.			Brownsville, Tex.			Dallas, Tex.			El Paso, Tex.			Houston, Tex.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Aberdeen, S. Dak	1,304	362	231	963	287	182	1,562	392	245	1,034	289	187	1,378	366	225	1,278	334	215
Alliance, Nebr	1,168	322	207	876	240	151	1,443	362	231	957	262	170	1,223	332	205	1,166	306	201
Cedar Rapids, Iowa	1,219	341	218	819	251	158	1,317	350	218	774	244	157	946	296	176	1,016	286	185
Denver, Colo	950	261	167	676	182	114	1,311	361	218	815	265	176	706	248	151	1,034	310	187
Duluth, Minn	1,515	373	246	1,101	304	196	1,641	395	253	1,099	292	193	1,510	373	240	1,342	337	220
Fargo, N. Dak	1,532	363	240	1,115	304	196	1,690	409	269	1,167	309	201	1,496	363	237	1,363	350	226
Green Bay, Wis	1,518	369	240	1,115	289	186	1,652	384	247	1,158	308	201	1,622	372	240	1,224	312	202
Kansas City, Mo	959	298	176	536	199	128	1,026	305	187	1,056	284	178	953	286	176	783	246	153
Kearney, Nebr	1,020	303	185	699	218	138	1,198	333	204	1,062	283	178	989	296	182	911	282	174
Minneapolis, Minn	1,373	363	223	971	274	170	1,467	374	257	1,264	333	209	1,366	353	222	1,144	292	204
Minot, N. Dak	1,659	437	296	1,246	356	224	1,827	458	275	1,360	358	225	1,643	437	270	1,405	362	253
Omaha, Nebr	1,052	309	196	841	236	150	1,215	322	193	1,116	296	185	1,124	305	187	1,045	282	174
Rapid City, S. Dak	1,346	366	230	854	243	153	1,622	413	253	1,072	283	178	1,089	324	204	914	262	163
St. Louis, Mo	1,142	319	196	782	225	143	1,396	355	218	1,055	279	173	1,045	324	204	945	273	169
Sault Ste. Marie, Mich	1,702	407	270	1,300	326	207	1,964	422	270	1,311	336	209	1,194	324	204	777	253	157
Scott City, Kans	967	267	171	806	254	163	1,112	324	196	900	236	145	1,796	252	158	1,057	249	156
Sioux Falls, S. Dak	1,216	334	207	969	254	163	1,384	399	236	1,116	296	185	1,501	333	207	1,105	289	180
Springfield, Mo	963	285	174	569	210	132	959	294	179	636	229	145	1,012	303	196	658	261	163
Trinidad, Colo	721	232	153	253	157	101	1,195	347	218	1,116	316	196	499	196	122	849	277	165
Wichita, Kans	747	252	153	336	157	101	965	329	207	636	229	141	733	295	185	62	252	141

APPENDIX 10

Scale of first-class rates (class 100)

[Prescribed for application in all territory covered by No. 28300]

Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate	Miles	Rate
5	40	160	82	580	152	1,150	234	1,775	311
10	43	170	84	600	155	1,175	237	1,800	313
15	46	180	86	620	158	1,200	240	1,825	316
20	48	190	88	640	161	1,225	244	1,850	319
25	50	200	90	660	164	1,250	247	1,875	322
30	52	210	92	680	167	1,275	250	1,900	324
35	54	220	94	700	170	1,300	253	1,925	327
40	56	230	96	720	173	1,325	257	1,950	330
45	58	240	98	740	176	1,350	260	1,975	332
50	60	250	102	760	179	1,375	263	2,000	334
55	61	260	106	780	182	1,400	266	2,025	337
60	62	300	110	800	185	1,425	269	2,050	340
65	63	320	113	825	189	1,450	272	2,075	342
70	64	340	116	850	193	1,475	275	2,100	344
75	65	360	119	875	196	1,500	278	2,125	347
80	66	380	122	900	199	1,525	281	2,150	349
85	67	400	125	925	203	1,550	284	2,175	351
90	68	420	128	950	207	1,575	287	2,200	353
95	69	440	131	975	210	1,600	290	2,250	357
100	70	460	134	1,000	213	1,625	293	2,300	361
110	72	480	137	1,025	217	1,650	296	2,350	365
120	74	500	140	1,050	221	1,675	299	2,400	368
130	76	520	143	1,075	224	1,700	302	2,450	372
140	78	540	146	1,100	227	1,725	305	2,500	375
150	80	560	149	1,125	231	1,750	308		

Between western trunk-line territory	And southwestern territory																				
	Little Rock, Ark.			Memphis, Tenn.			New Orleans, La.			Oklahoma City, Okla.			San Antonio, Tex.			Shreveport, La.			Sweetwater, Tex.		
	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale	Distance	Present rate	Eastern scale
Aberdeen, S. Dak	1,013	281	185	1,028	260	185	1,414	325	229	828	254	165	1,304	341	218	1,109	301	196	1,090	309	193
Alliance, Nebr	949	286	176	998	290	182	1,341	354	220	710	240	151	1,178	330	204	1,037	299	187	971	287	179
Cedar Rapids, Iowa	634	206	141	581	183	135	971	257	179	633	213	141	1,051	297	190	795	246	160	915	271	174
Denver, Colo	957	296	179	1,015	297	185	1,291	366	215	683	244	149	1,025	310	185	991	300	182	681	244	149
Duluth, Minn	1,015	260	185	932	234	176	1,317	299	218	954	260	179	1,376	343	226	1,174	297	201	1,213	315	207
Fargo, N. Dak	1,109	286	196	1,055	266	190	1,404	324	229	947	272	176	1,414	358	229	1,228	317	209	1,208	325	207
Green Bay, Wis	800	227	169	726	199	153	1,110	267	196	929	254	176	1,334	333	220	997	265	182	1,215	312	207
Kansas City, Mo	463	183	119	473	185	119	864	253	168	340	155	101	761	253	157	560	207	130	625	223	141
Kearney, Nebr	693	238	149	743	245	155	1,086	306	193	455	179	117	925	284	174	808	252	163	715	243	151
Minneapolis, Minn	878	245	171	826	223	163	1,217	292	207	790	240	160	1,230	323	209	1,031	283	187	1,069	295	190
Minot, N. Dak	1,270	329	212	1,269	311	212	1,660	382	256	1,094	323	193	1,561	407	245	1,367	366	223	1,354	378	223
Omaha, Nebr	648	218	143	653	211	143	1,044	275	187	486	186	122	949	279	176	750	239	155	747	249	155
Rapid City, S. Dak	1,128	320	198	1,162	303	201	1,519	366	240	888	274	171	1,356	364	223	1,215	333	207	1,097	323	193
St. Louis, Mo	344	154	103	296	136	96	587	209	135	541	197	130	917	279	174	545	202	130	860	263	168
Sault Ste. Marie, Mich	1,073	263	190	980	238	182	1,371	305	223	1,283	290	207	1,603	370	251	1,270	303	212	1,488	349	237
Scott City, Kans	663	234	145	748	250	155	1,055	306	190	529	167	109	847	273	165	750	[illegible]A	155	593	220	135
Sioux Falls, S. Dak	841	248	165	859	228	168	1,243	294	207	650	221	143	1,119	308	196	936	268	176	912	276	174
Springfield, Mo	315	150	98	281	146	96	672	231	145	302	150	98	694	242	149	440	185	114	610	222	138
Trinidad, Colo	874	277	168	981	297	182	1,106	339	196	528	206	128	840	277	165	806	268	163	495	196	122
Wichita, Kans	445	185	117	540	200	128	838	270	165	171	118	77	639	232	141	532	204	128	433	183	114

Exhibit 6.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 15th day of May, A. D. 1945

No. 28300

CLASS RATE INVESTIGATION, 1939

It appearing, That by order dated July 29, 1939, as modified by orders dated August 1, 1940, the Commission, on its own motion, instituted a proceeding of investigation and inquiry into and concerning the interstate class rates applicable to the transportation in interstate or foreign commerce of property by common carriers by railroad, or by water, or partly by railroad and partly by water, subject to the Interstate Commerce Act, and the charges resulting therefrom, between all points in the United States lying on and generally eastward of the following line: The western boundaries of the States of North Dakota, South Dakota, and Nebraska south to the main line of the Union Pacific Railroad Company, thence along such railroad west to Cheyenne, Wyo., thence south on the line of The Colorado and Southern Railway Company and paralleling railroads passing through Denver, Pueblo, and Trinidad, Colo., to the border of the State of New Mexico, thence successively east, south, and west along the latter border to the Rio Grande River (excluding any point in New Mexico), thence along the Rio Grande to the Gulf of Mexico, with a view to determining whether said rates and charges, or any of them, are unjust, unreasonable, unduly prejudicial, unduly preferential, or otherwise unlawful, and to making such findings and order or orders as may be proper in the premises.

Exhibit 6.

It further appearing, That all common carriers by railroad or by water subject to the Interstate Commerce Act, participating in the transportation described in the preceding paragraph, were made respondents to this proceeding.

And it further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the respondent common carriers by railroad in this proceeding, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before August 30, 1945, and thereafter to abstain, from publishing, demanding, or collecting for the transportation in interstate commerce of property moving at the classification ratings within southern, southwestern, and western trunk-line territories, as those territories are described in the report herein, and interterritorially between those territories, and also between those territories and official territory, as described in the said report, rates which exceed those prescribed in the next succeeding paragraph.

It is further ordered, That said respondent common carriers by railroad, according as they participate in the transportation, be, and they are hereby, notified and required to establish on or before August 30, 1945, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act,

and thereafter to maintain and apply to the transportation of property moving at the classification ratings within southern, southwestern, and western trunk-line territories, as described in the report herein, and interterritorially between those territories, and also between those territories and official territory, as described in said report, rates which shall not exceed the present rates reduced by 10 percent; *Provided*, That such rates shall be subject to observance of the rates in the distance scale set out in Part III of the said report as minima.

It is further ordered, That, to remove the unreasonableness in the rates and to bring to the minimum the undue preference and undue prejudice found to exist said respondent common carriers by railroad, according as they participate in the transportation, be, and they are hereby, authorized and directed to increase by 10 percent the existing applicable interstate class rates for freight traffic moving at classification ratings in official territory (including Illinois territory), subject to the qualifications set forth in the report herein, and to maintain the rates so increased as the reasonable rates to be hereafter observed until further order of the Commission.

It is further ordered, That said respondent common carriers by railroad, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before August 30, 1945, and thereafter to abstain from publishing, demanding, or collecting for the transportation in interstate commerce of property in less-than-carloads moving at the classification ratings in the territory included in this proceeding a minimum charge per shipment which is less than that prescribed in the next succeeding paragraph.

Exhibit 6.

It is further ordered, That said respondent common carriers by railroad, according as they participate in the transportation be, and they are hereby, notified and required to establish on or before August 30, 1945, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the transportation of property in less-than-carloads, moving at the classification ratings in the territory included in this proceeding minimum charges which shall not be less than 75 cents per shipment.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

Exhibit 7.

(Cover and index omitted.)

BEFORE THE

Interstate Commerce Commission

Docket No. 28300

CLASS RATE INVESTIGATION, 1939

Docket No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

PETITION OF

STATE OF NEW YORK
STATE OF NEW JERSEY
COMMONWEALTH OF PENNSYLVANIA
STATE OF MARYLAND

and of

VARIOUS CHAMBERS OF COMMERCE AND COMMERCIAL ORGANIZATIONS IN EASTERN TRUNK LINE TERRITORY

FOR RECONSIDERATION, REARGUMENT AND POSTPONEMENT OF THE EFFECTIVE DATE OF ORDER

Now come the several sovereign states above named and the chambers of commerce and commercial organizations in Eastern Trunk Line Territory listed hereafter and

Exhibit 7.

petition the Commission to reconsider its decision and order herein, dated May 15, 1945; in aid thereof to hear oral argument either upon the record heretofore made or after further hearing to receive evidence with regard to the rates prescribed; after such reconsideration to modify its findings, conclusions and order in the respects indicated herein, and pending such reconsideration and the determination thereon to postpone the effective date of its order herein. In support of their petition, petitioners respectfully show:

I

The position of petitioners in general concerning the report and order herein.

In a proceeding which takes on the sectional aspects which have been so stressed here, the purposes and motivating reasons of contentions urged on different sides are liable to be misunderstood or misconstrued. Therefore, it seems desirable to state briefly why petitioners take vigorous exception to the report and order, as well as to indicate some considerations which do *not* prompt this petition.

It is naturally the concern of the governments of the Northern states and commercial bodies to protect the interests of their citizens and to promote conditions under which business will thrive and people will have employment within their communities. When these are threatened, it is their function to see to it that all facts are developed and presented and all proper arguments made on their behalf to the tribunal having the matter in hand for determination.

It is not the position of these petitioners that the railroad freight structure is perfect nor that it may not be

simplified and various irregularities and inconsistencies eliminated to good advantage. On the other hand, petitioners believe that a rate structure is not necessarily unlawful or obsolete merely because it has been long in effect, when it has had a natural growth, has reflected local needs and conditions, and its present form has been largely approved by the Commission.

Petitioners neither seek to retain advantages for their own communities which are unjustified, nor would they urge that other sections of the country be subjected to higher rates than their conditions warrant. But petitioners do object to an order of the Commission directing that any freight rates be changed if a fair weighing of all of the evidence fails to establish the unlawfulness of the existing rates.

They regard the preservation of the long tried regulatory system developed under the Interstate Commerce Act and the avoidance of the evils of bureaucracy by the method of permitting regulatory changes only in accordance with evidence taken at public hearings as of far greater importance than the temporary measure of freight rates. They are concerned that the integrity of the long-established administrative procedure shall not be impaired; that the Commission, however wise it may be, shall not assume the functions of management for the railroads; and that changes in rates, however desirable they may appear from the standpoint of either theory or business, shall not be required except upon a finding amply supported by evidence that existing rates are unlawful in violation of one or more of the provisions of the Act.

It is because they regard the report and order of the Commission here as in violation of these principles that they urge reconsideration.

In addition to this basic objection to the report and order, they have the further and more direct grievance that the order, without, as they submit, any evidence whatever to support such a result and without any request therefor by the parties, would increase the freight rates and the cost of doing business in their borders, would make their communities less attractive to industries and impose a new burden upon their citizens and members.

II

The conclusion that the present class rates are unlawful because not on a uniform level throughout the country east of the Rocky Mountains is not supported by the findings, is contrary to and without support in the evidence and does not justify the order requiring an increase in the class rates in Official territory.

It is apparent from the report as a whole that the Commission's conclusions and its interim order directing a 10 per cent increase in the class rates in Official territory have as their only purpose the accomplishment of approximate equality of the levels of the class rates in the several territories. If, therefore, the evidence fails completely to establish that the present differences in class rate levels in the several territories violate the statute, the purpose and foundation of the order requiring an increase in the class rates in Official territory fail.

As we read the Commission's report, it attempts to support the conclusion that the differences in class rate levels result in violations of the statute by resting it upon three subordinate propositions or assumptions:

first, that the differences in class rate levels prevent the free flow of traffic and are the source of injury to the South and West by impairing their industrial development; second, that there are no such differences in the makeup of the traffic in the several territories as to justify departure from uniformity; and third, that the costs of transportation in the several territories do not warrant different class rate levels. It is submitted that each of these three propositions or assumptions is contrary to or without substantial support in the evidence of record in this proceeding. The evidence was discussed at length in the original brief of these petitioners and it would be unwarranted duplication to repeat what is there said. We submit, however, that it was fully demonstrated that the evidence of record failed to support any one of the subordinate propositions upon which the Commission's conclusion rests and that, therefore, the Commission acted erroneously and arbitrarily in reaching that conclusion. The original brief is therefore respectfully referred to, but the following brief comments are submitted, addressed particularly to the Commission's report.

(a) The evidence does not support a conclusion that the difference in levels of class rates prevent the free flow of traffic or injure the South and West.

Commissioners Porter and Barnard in their dissenting opinions have effectively demonstrated the utter lack of any substantial evidence that the existing differences in class rate levels have in any way restricted the movement of traffic or prevented the industrial growth of the South and West. Even the summaries in the majority report clearly show how utterly inconsequential was the evidence presented to show the effect of the class rate levels upon the ability of the South and West

to ship and upon the business and industry of these sections. There was scarcely a scintilla of proof that any southern shipper was prevented by the difference in the levels of the class rates from marketing his products in the North. Instead, the evidence as a whole shows a phenomenal industrial growth in the South. It shows that southern products move freely into Official territory and sell freely in the North in competition with manufactured articles produced right in the North.

Doubtless one explanation why the South has grown so rapidly industrially is that many southern manufacturers enjoy the benefit of low inbound rates on their raw materials, so that their total transportation charges inbound and outbound probably do not exceed or may be less than the transportation charges paid by their northern competitors, distance considered.

But in any event a conclusion that the industrial development of the South and West has been hampered or that shippers in those territories have suffered injury or been barred from selling their products by the differences in levels of the class rates is contrary to the overwhelming weight of the evidence.

(b) There is no such similarity between the traffic in the several territories as to support a finding that differences in the levels of the class rates are unreasonable and discriminatory.

It is said by the majority of the Commission on this point (sheets 264-266) that there are as great variations within each territory in the kinds of freight transported therein as there are between one territory and another. Presumably the reasoning from this statement is that if there can be uniform class rates throughout a territory despite the wide variety of traffic in that terri-

tory, there is no reason why there should not be uniformity of class rates interterritorially. It is submitted that the reasoning is unsound, and that the premise is incorrect and contrary to the evidence.

First of all, the reasoning is fallacious because it ignores the differences in the rate structures in the several territories. The class rates in Official territory are part of the rate fabric of that territory, which includes relatively high rates on low grade freight and unfinished goods. The class rates in Southern territory, on the other hand, are part of a rate structure which includes low rates on raw materials. Even if there were relatively the same quantities of low grade freight and high grade freight in each territory this would not call for parity of class rates alone, much less make the existing class rate levels unlawful, so long as different rate levels on other commodities exist in the two territories. If the so-called consists of traffic are not different in the several territories, then the average rate levels should be similar and there is no justification for requiring an increase in the levels of the class rates in Official territory so long as the high raw material rates are permitted to continue in that territory and at the same time reducing the class rates in the South and West but allowing the low raw material rates in those territories to remain in effect.

The majority's reasoning also ignores the important consideration discussed by Commissioner Porter in his dissent; namely, the differences in the carriers in the several territories and the fact that the territorial boundaries generally correspond with the termini of the railroads in each section. As a result of this situation the means do not exist for averaging differences interterritorially, which is possible in the case of a railroad system extending throughout one territory.

Exhibit 7.

Finally on this point we submit that the majority's premise is incorrect and that the evidence plainly does show marked differences between the territories in the traffic involved, which doubtless explain and would seem to go far to justify the different rate-making practices and rate patterns which have been followed. It may well be, as the report suggests, that a car of coal in one territory is not greatly different from a cost and revenue producing standpoint, from a car of phosphate rock in another territory. But merely to state this is far from analyzing accurately the evidence with respect to the differences in traffic between the several territories. The evidence, for example, shows that the coal traffic is not only much greater in volume but is much more widely and evenly distributed among the several carriers in Official territory than it is in the South. The record shows that in Official territory there is a huge volume of iron and steel products, which in the very nature of things cannot exist in other territories. It shows, on the other hand, that in the South there are both a large proportion of low-grade products and also a large volume of perishable fruits and vegetables, which are not produced in the North, and that an outstanding characteristic of the traffic of the West which distinguishes it from that of Official territory is the large proportion of grain and livestock. On this point we refer to Exhibits 164, 165, 166, 224 and the testimony of Witness Bell, which are discussed at pages 123-141 of our original brief.

In short, we submit that the evidence demonstrates that there *are* greater differences between the consists of the traffic in Official territory and in the South than exist as between the major railroads of Official territory.

(c) The evidence as to transportation costs does not support a conclusion that differences in the levels of the class rates are unlawful.

Turning to the matter of costs, we refer to the discussion in our main brief (pp. 86-141) of the Edwards cost studies and of the limitations which Dr. Edwards himself recognized as to the uses which might be made of them and the inferences properly to be deduced therefrom.

The first point is that whatever the cost computations and scales prove, they prove it as to all traffic and not as to any particular kind or class of freight. Thus, if it could properly be concluded from the cost exhibits that there is substantial equality in the average costs of transportation as between Official territory and the South, this conclusion as a basis for rate making would require equality of rates on all traffic. On the other hand, it would not justify requiring parity of rates on class rate traffic so long as different rate levels are maintained for the transportation of raw materials and freight moving at commodity rates. We recall Dr. Edwards' testimony on this point, where he said (R. 3237):

> "Q. Therefore, would you not agree, Doctor, that if it should appear that the average costs so computed for that length of haul and that loading in one section of the country were the same as in another, and that some freight in one territory yielded lower revenue than in another territory, while other freight yielded a higher revenue, the fact that the costs were equal would not indicate that all of the rates would have to be equalized, on all classes of traffic, in order to yield cost, would it? A. That is right. There might be a different distribution of the transportation burden, as between different commodities in different territories.
>
> Q. And that is in effect what you mean, is it not, when you say, in a somewhat different connection, I believe on page 3 of your Exhibit No. 2, that if some

service pays less, other service must pay more? A. Yes."

It is submitted, however, that to the extent that those comprising the majority of the Commission have been led to their conclusion that there should be uniformity of class rates by the belief that the evidence proves that there is no substantial difference in the average costs of transportation in the several territories, the conclusion rests upon a premise which is not supported by the proof.

The majority have fallen into the confusion which from the beginning has created one of the difficulties in an intelligent analysis and use of Dr. Edwards' cost computations. This is the fact that the groupings of carriers for the purposes of Dr. Edwards' average group costs are not the same as the groupings of carriers for rate making.

On sheet 138 of the majority's report it is stated that the first step in the cost computations was the "assignment of railroads, or divisions thereof, to geographical areas corresponding as nearly as practicable to the rate territories." The fact remains, however, that the groupings for the cost computations do not correspond with the rate territories. Official territory embraces Trunk Line, Central Freight Association, and New England territories. The Pocahontas Lines are carriers in Official territory. There is no such thing as a Pocahontas territory as Dr. Edwards originally suggested. The Official territory class rates are in effect on the Pocahontas Lines. This is necessarily so because their lines traverse Official territory. The 10 per cent interim increase is required in these rates, and yet to a large extent Dr. Edwards' computations are based upon excluding the figures as to the Pocahontas Lines in arriving at his average results for Official territory. Indeed it was only by such exclusion that the computations were

made upon which the majority predicated its basic finding (sheet 179) that:

> "the Edwards cost studies show that there is little significant difference in the cost of furnishing transportation in the South as compared to the East * * *."

The majority recognize this when they correctly state that

> "If the Pocahontas region is included with the East, the costs for the South, based on the year 1939, are between 3 and 6 per cent above those for the East."

This is certainly a "significant difference" in the cost of furnishing transportation.

Moreover, when it is borne in mind that the Official territory lines have relatively much higher rates for the transportation of raw materials, it is plain that on the basis of this difference in average costs the class rates in Official territory should be substantially more than 6 per cent below those for the South and that there is no justification for a finding that the evidence as to costs proves that differences in class rates are unlawful.

On sheets 156 to 158 inclusive of the majority's report some of the criticisms of Dr. Edwards' cost studies are discussed, but nowhere in the report is mention made of a further fundamental criticism of the computations: that to a considerable extent the costs for the railroads in the South are reduced by the inclusion in the averages of the results of transportation operations which took place in Official territory. It clearly appears that the spread between the lower average costs of Official territory (including the Pocahontas Lines) and the higher costs of the South would be even greater were it not that the average southern costs are reduced by the inclusion in the figures of the Southern railroads of the low costs of hauling coal over some lines which are physically in Official territory (R. 3619-30; Exh. 166).

Exhibit 7.

We submit that it has not been proved at all that the cost evidence requires or supports a conclusion that the levels of the class rates must be the same in all territories.

For these and other reasons, which are more fully set forth in petitioners' original brief, it is submitted that there is no justification in the record in this proceeding for finding that the existing class rates are unlawful because they are not on the same levels, distance considered, in all territories; and if this is so, the underlying justification for directing a 10 per cent increase in the class rates in Official territory is non-existent.

III

The record affords no justification for the requirement that the class rates in Official territory be increased.

(a) The minimum rate order increasing the class rates of carriers in Official territory is entirely without the support of any evidence of financial need or revenue considerations.

The majority report contemplates a permanent revision of the class rates in all territories, arrived at on the basis of the scale set out in Appendix 10. This is described as "Scale of First Class Rates (Class 100) Prescribed for application in all territory covered by No. 28300". For 200 miles this would produce a first class rate of 90 cents as compared with the present Official territory mileage scale rate of 80 cents (Appendix 8). For 500 miles the present scale rate of $1.22 would be increased to $1.40 and for 1,000 miles the rate would be $2.13 as compared with the present scale rate of $1.82. It is not clear from the report whether rates in accordance with this scale are intended to be prescribed as minimum rates. In finding 4

(sheets 270-271), it is said that a just and reasonable and non-discriminatory basis of class rates will result from these scale rates "as a maximum". Nevertheless, the plain intent is that there shall be a drastic increase in the class rates within Official territory.

With regard to the interim adjustment, however, there is no doubt that the 10 per cent increase is intended to be mandatory and that the Commission's order is an attempted exercise of its minimum rate power.

We submit that there are no findings in the report and no evidence in the record to support findings which would justify a requirement, that the class rates in Official territory be increased even if the differences in class rate levels could properly be found to create undue preference and prejudice in violation of Section 3.

It has been consistently held that the power to prescribe minimum rates should be exercised sparingly and only where there is convincing evidence that existing rates are unremunerative or so low as to burden other traffic or that a proposed rate reduction seriously threatens a rate war which will impair the financial ability of the carriers to continue to provide service.

Rubber Tires from California to Idaho and Utah, 245 I. C. C. 661, 666;
Petroleum and Petroleum Products, Calif. to Ariz., 241 I. C. C. 21, 41;
Petroleum between Washington, Oregon, Idaho, Montana, 234 I. C. C. 609, 637;
Sugar Cases of 1922, 81 I. C. C. 448, 472.

Certainly not one of these facts is found by the Commission or established by the evidence here.

There is no finding by the Commission, necessary to support a minimum rate order, that the class rates in Official

territory are lower than minimum reasonable rates. Nor is there evidence to support such a finding.

Except for the claim of the truckers, who sought an increase in the L. C. L. rates of the railroads in order to discourage the movement of less-carload traffic by rail and cause its diversion to the trucks, no contention was made by anyone during the course of the extended hearings that the class rates in Official territory were too low or unremunerative or that they should be increased.

There is not a scintilla of proof that the class rates as a whole in Official territory are unremunerative; there is not the slightest suggestion that they are so low that freight transported thereunder fails to pay its way, so that a burden is thrown upon other traffic transported by the same railroads; there is not a word of proof that because of the class rates a rate war is threatened in Official territory which would jeopardize the revenues of the Official Classification lines; nor could there be such proof because the facts are to the contrary.

The class rates in Official territory were prescribed as maximum reasonable rates not as minimum rates; *Eastern Class Rate Investigation*, 164 I. C. C. 314. They have been increased from time to time but always as maximum rates. Recently, in *Ex Parte 148* the Commission has declined a further increase sought by the railroads and has thereby held that the present rates are maximum reasonable rates and provide the railroads with all the revenue to which they are entitled for the transportation covered thereby. Under these circumstances, it is simply inconceivable that the same rates could be held to be less than minimum reasonable rates or that a minimum rate order requiring that they be increased could be justified. But there are further reasons why the proposed requirement that the class rates in Official territory be increased can only be regarded as arbitrary, inconsistent and contrary to the facts.

Exhibit 7.

How can it be explained to a shipper of class rate traffic over the Chesapeake & Ohio, for example, that his rates must be increased 10 per cent, when the Chesapeake & Ohio's net earnings have put it in the excess profits tax class. The cost studies of Dr. Edwards leave no doubt that the Pocahontas Lines are operating profitably. Nevertheless they are Official Classification territory carriers whose class rates would be increased 10 per cent under the Commission's order.

Again, the class rate adjustments have been in effect for a considerable number of years. The class rates in Official territory were prescribed by the Commission as maxima after the Southern class rates had been established. How can it now be said that they have become less than minimum reasonable rates to the extent that they are not brought up to the new Southern level?

There is no justification here for a minimum rate order.

(b) An increase in class rates in Official territory would impair the freedom of movement of traffic at such rates.

One of the majority's criticisms of the existing class rate structure is that it is not suited to the needs of traffic, as indicated by the small proportion of total freight which moves at class rates. However, this is not a reason for increasing the class rates in Official territory but quite the reverse. The table on sheet 129 indicates that the carload traffic moving at class rates in Official territory represents a greater proportion of the total carload traffic than is the case in any other territory. Furthermore, the carload traffic having either origin or destination in Official territory and moving at class rates is a far greater proportion of the total of

such interterritorial movement than is the interterritorial traffic between any of the other territories.

Obviously, an increase in the class rates in Official territory, therefore, will adversely affect a greater volume of traffic than will be benefited by a reduction in the class rates elsewhere. Moreover, an increase of 10 per cent can have no other result than to discourage the movement of traffic in Official territory at class rates and either divert it to other forms of transportation, compel the establishment of commodity rates or exceptions or induce shippers to move to other sections of the country. It will certainly not be achieving correction of one of the criticized features of the class rate structure if, as the result of its order, the Commission reduces the proportion of traffic in Official territory moving at class rates to the low percentage of the total which obtains in other territories.

(c) The fact that the accomplishment of uniformity of class rates at the Official territory level would impair the revenues of the carriers in other territories does not justify increasing the rates to be paid by shippers in Official territory.

As has been said, it is apparent that the order requiring a 10 per cent increase in the class rates in Official territory is prompted chiefly by the majority's desire for a uniform class rate level throughout the country and the conviction that a reduction in the class rates in the South and West to the Official level would so reduce the revenues of the carriers in those territories as to impair their ability to provide adequate service. It seems probable that such a reduction would have this result because it must be recalled that the volume of traffic affected thereby is not to be measured by the relatively small quantity moving at class rates but includes also an

unknown but presumably very large volume of traffic now moving at commodity or exception rates, which are higher than would be the reduced class rates and would, therefore, give way to the latter. The majority of the Commission itself, based upon evidence of record, concludes that the net reduction in revenue for the carriers in the Southern region which would be caused by substituting the average rate per ton per mile of the carriers in the Eastern territory for that of the Southern railroads would be somewhere between $16,987,789 and $40,403,665 per year, based upon 1939 traffic (sheets 177-178). This, of course, does not tell the whole story here because the average revenue per ton mile in Official territory takes into account the higher rates on low grade freight in that territory. It may be that the Southern railroads could not stand such a reduction in their revenues.

It is submitted, however, that these considerations do not justify increasing the class rates in Official territory, but on the contrary condemn the order requiring such an increase as arbitrary, unfair and discriminatory. In plain terms, the effect of the order predicated upon such a purpose is that shippers in Official territory would be required to pay higher rates than the costs, the revenue needs, the rate structure or the traffic of their territory justify in order to enable shippers in Southern and Western territories to pay lower rates. However desirable uniformity may be, it cannot justly be brought about at the expense of northern shippers and communities.

Not only is an order with such a purpose and result unjust, it is without any legal basis in the statute and is contrary to rate-making principles adopted by the Commission.

Exhibit 7.

During the period of the Recapture Clause, so-called, it might have been argued that it was the policy of the law, in the interest of maintaining the transportation system of the country as a whole, that shippers using certain railroads might be required to pay higher rates than needed by those railroads to the end that other railroads might be maintained although compelled to charge rates inadequate for their operation, the excess revenues from the former being transmitted to the latter carriers through the operation of the Recapture Clause. However, this feature of the law proved unworkable and unfair and was repealed. The repeal of the Recapture Clause is convincing evidence that it is not the intention of Congress under the statute as it now is that some shippers shall be taxed higher rates than justified by the needs of their carriers in order that other railroads may live and their patrons may pay low rates. Certainly, where the record is so devoid of proof of substantial injury to any section or to the country as a whole as is the record here, a mere desire for the apparent logic and orderliness of a uniform rate level is not an adequate justification for the resulting unfairness.

An increase in the class rates in Official territory to a basis higher than justified by the revenue needs of the carriers and the traffic considerations in that territory in order that uniformity of class rates may be brought about at a level which will not bankrupt the railroads in the South and West would, in principle, be like requiring a low-cost carrier to charge higher rates than its circumstances merit in order to permit a high-cost carrier to compete and operate at a profit. This the Commission has declined to do; *Seatrain Lines, Inc.* v. *Akron, C. & Y. Ry. Co.*, 243 I. C. C. 199, 215.

Exhibit 7.

(d) The requirement that the class rates in Official territory be increased cannot be justified on the ground of removing undue preference and prejudice.

The majority has so framed its findings as to make it appear that the accomplishment of the desired uniformity is equivalent to and designed to accomplish the removal of undue prejudice and preference found by it to exist and that the rate increases in Official territory are prescribed under Section 3 as well as under Section 1. We have argued in the previous point that there is no proof of injury caused by the differences in levels of class rates sufficient to sustain a finding of undue prejudice and preference in violation of Section 3 and that the facts in other respects do not warrant a finding that the differences in levels of the class rates in the several territories produce such a violation.

However, even if the differences in levels of class rates did constitute discrimination, this would not give the Commission authority to require that the discrimination must be removed in but one manner.

It is well settled that it is the essence of a finding of undue prejudice and preference under Section 3 that the carriers shall have an alternative as to the manner in which the discrimination shall be removed—whether by reducing the higher rates or raising the lower rates or both—and that if the situation is such that the carriers cannot have such an alternative then a violation of Section 3 cannot be found. *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627, 650; *Northeast Kentucky Coal Bureau* v. *Chesapeake & Ohio Ry. Co.*, 201 I. C. C. 165, 170. Of course the situation is different where an order of the Commission requiring an increase or a reduction in rates is made pursuant to Section 15. In

such a case, although the order may have the result of removing alleged discrimination in violation of Section 3, the Commission's authority rests upon its power to prescribe maximum or minimum reasonable rates and not upon its authority to remove discrimination in violation of Section 3. *Youngstown Co.* v. *United States,* 295 U. S. 476, 480; *St. Louis S. W. Ry. Co.* v. *United States,* 245 U. S. 136, 145. We have urged under a previous heading that the record here does not sustain the Commission's order requiring an increase in the class rates in Official territory as an order under Section 15 prescribing minimum rates pursuant to the minimum rate power conferred by that section. The present point is directed to the question whether the Commission's order can nevertheless be sustained as an order under Section 3 of the Act directing the removal of discrimination in violation thereof.

It follows from the decisions cited that if the differences in levels of class rates could properly be found to cause undue prejudice and preference in violation of Section 3, the carriers must be left free to remove the discrimination in any way they see fit. Hence, there is here no justification for the order requiring the lower class rates in Official territory to be increased and depriving the railroads of the option to accomplish uniformity by reducing the rates in the South and West.

The only exception to the principle that the carriers must be left free to remove discrimination in any way they choose may be in cases where the higher rates are so plainly in excess of maximum reasonable rates that the carriers should not be left free to remove the prejudice by raising the lower rates to equality with them, or where the lower rates are less than minimum reasonable rates so that the higher rates could not properly be re-

duced to their level. Here, however, is no finding by the Commission, and certainly no evidence to support a finding, that the rates in Official territory are so much below minimum reasonable rates that parity achieved on the Official level would be unlawful in so far as carriers in that territory are concerned.

As a matter of fact, instead of there being justification for the requirement that the rates in Official territory be increased for the purpose of removing the claimed discrimination, the considerations just discussed emphasize the contention previously urged that no violation of Section 3 can properly be found on the evidence and under the circumstances here. This is so, on the authority of the cases last cited, if conditions do not in practical effect afford an option to the carriers as to how they shall accomplish the uniformity considered necessary to remove the alleged discrimination. And it is so because if the revenue needs of the railroads in Southern and Western territories are so great that uniformity of class rates cannot be brought about at the Official level, then the conditions in the several territories must be so different as to justify the different rate levels so that no violation of Section 3 can properly be found.

(c) The requirement that the class rates in Official territory be increased will discriminate against that territory.

The Commission's order, far from having as a justification the removal of discrimination, preference and prejudice, will create undue prejudice to the Northern states and communities and shippers therein.

This is so, first, because of the fact, frequently pointed out in this proceeding, that the rates on raw materials and many low grade products are materially higher in

Official territory than in the South, so that equality of class rates while northern manufacturers and shippers are still required to pay higher freight rates on their inbound materials, will give southern shippers and communities a material freight rate advantage.

It is so, also, considering only the traffic which moves at class rates in Official territory because, as would be shown if the Commission conducted hearings as to the effect of its order, there are many products in Official territory which move at class rates which would be increased as a result of the order, whereas the same articles shipped to common destinations from points of production in the South and West move at commodity rates or exceptions, which the order would leave unchanged.

(f) The Commission's order requiring an increase in the class rates in Official territory improperly disregards the economic effect of such an increase on the North and on the country as a whole.

As a final objection to the required increase in the class rates in Official territory, it is submitted that in reaching its conclusion and making its order the Commission has ignored or has failed to give adequate weight to the effect of such an increase upon the states, communities and industries in the North and the consequences thereof for the population of the Northern states and the economy of the country as a whole. It is not as though the existing class rate structure had prevented the industrial growth of the South and West. The evidence, as we have pointed out before, is overwhelmingly to the contrary. The South has grown industrially, presumably because for many industries it has offered advantages of cheaper labor, cheaper raw materials, lower living costs, lower taxes, nearness to raw materials or proximity to the markets primarily sought to be reached. The lower inbound rates on raw

materials have undoubtedly been an important factor. The North, however, remains the greatest center of population of the country. There are in the Northern states more workers dependent upon industries for their jobs. The closing or impairment of manufacturing industries will have a more serious adverse effect upon the population dependent upon industry for its livelihood and upon the buying power of the people in the North than would be the case in other sections of the nation. A 10 per cent increase in class rates in Official territory would be *pro tanto* an increase in the cost of manufacturing and doing business in the North. It would stimulate, as it is intended to do, the migration of industry to other sections of the country. But, as the record shows, when industrial plants migrate the workers, by and large, do not go along but are left behind to join the ranks of the unemployed. We submit that the Commission has not given adequate consideration to this phase of the matter when it has ordered an increase of 10 per cent, which no one sought, in the level of the class rates in Official territory.

IV

The absence of a proposed report or of preliminary findings makes reconsideration and reargument desirable.

This is a case whose ultimate consequences are intended to have a grave effect upon the economic and industrial structure of the country. It is the Commission's usual practice in proceedings of far less importance that a proposed report or suggested findings and conclusions are circulated in order that they may be subjected to the scrutiny of the parties and may serve to focus argument and criticism for the Commission's assistance, before final conclusion is announced. It is ex-

traordinary, therefore, in a proceeding such as this, whose results are designed to be so revolutionary, that the Commission should proceed to a determination without some form of intermediate report and without submitting the proposals embodied in its ultimate conclusion to the consideration and criticism of the parties affected.

The circumstances which compelled the Commission to demonstrate its diligence in dealing with the issues involved are well known. However, the considerations which give to this proceeding its great importance also render it essential that errors shall not be made and to this end that ample opportunity shall be afforded to test the consequences of the decision before the decision becomes effective.

If, as we contend, the evidence does not warrant a conclusion that the existing differences in the levels of the class rates result in illegality and that, therefore, no order requiring a change in the existing rates is warranted in this proceeding, the consequences of the decision, namely, the continuance of the present rates, as known. However, if it is considered that a change should be required, it is impossible for the parties to gauge the consequences of the change proposed, to estimate the effect upon their own communities or business interests, to measure the results from the standpoint of the revenues of the carriers until the proposal has been made known. This was only done here by the Commission's report and order of May 15, 1945.

Therefore, in accordance with the usual practice and in the interest of sound administration of the Act, it is submitted that the Commission should not permit its order to become effective without first hearing, at least by oral argument, the appraisals of the parties as to the probable consequences thereof. Moreover, it is suggested that it might well be in the broad public interest for

the Commission to set the proceeding for further hearing to receive evidence from those concerned as to their objections to or reasons for the changes required by the order and the consequences expected to flow therefrom.

Conclusion and Prayer

For the foregoing reasons and for the other grounds urged in the original brief of petitioners in this proceeding, it is submitted and petitioners respectfully pray that the Commission should reconsider its report and order herein; that in aid of such reconsideration it should hear oral argument directed particularly to the report and the rate changes required by its order; that if it desires further indications of the effect of its findings and order than is possible in reargument on the record already made, it set the proceeding down for further hearing, as it has frequently done to test the consequences of a proposed rate revision; that after such reconsideration it modify its findings and order in the respects herein urged, and that meanwhile it defer the effective date of its said order. And petitioners pray for such other and further relief as in the premises may be proper.

Dated, July 13, 1945.

Respectfully submitted,

THE STATE OF NEW YORK,

By NATHANIEL L. GOLDSTEIN,
Attorney General,
Albany, N. Y.
PARKER MCCOLLESTER,
FRANK J. CLARK,
Special Assistant Attorneys
General,
25 Broadway,
New York 4, N. Y.

Exhibit 7.

THE STATE OF NEW JERSEY,

By WALTER D. VAN RIPER,
Attorney General,
State House, Trenton, N. J.
ROBERT PEACOCK,
Deputy Attorney General,
State of New Jersey,
State House, Trenton, N. J.

THE COMMONWEALTH OF PENNSYLVANIA,

By E. A. DELANEY,
Deputy Attorney General,
JAMES H. DUFF,
Attorney General,
Harrisburg, Pa.

THE STATE OF MARYLAND,

By WILLIAM CURRAN,
Attorney General,
Baltimore, Md.

THE CHAMBER OF COMMERCE OF THE STATE OF NEW YORK,

By PARKER MCCOLLESTER, its Attorney,
25 Broadway,
New York 4, N. Y.

PENNSYLVANIA STATE CHAMBER OF COMMERCE,

By ROBERT B. HEPPENSTALL,
State Chamber Building,
Harrisburg, Pa.
CHARLES DONLEY, Practitioner,
Dravo Building,
Pittsburgh, Pa.

Exhibit 7.

CHAMBER OF COMMERCE, DELAWARE, INC.,
By P. F. GUERKE, Traffic Manager,
400 Mullin Building,
Wilmington 24, Delaware.

NEW JERSEY INDUSTRIAL TRAFFIC LEAGUE,
By GEORGE E. MARTIN, Secretary,
P. O. Box 601,
Newark 1, N. J.

ASSOCIATED INDUSTRIES OF NEW YORK STATE, INCORPORATED,
By J. F. COYLE,
Chairman, Transportation Council,
343 State Street,
Rochester 4, N. Y.

BALTIMORE ASSOCIATION OF COMMERCE,
By CHARLES R. SEAL,
Transportation Director,
22 Light Street,
Baltimore, Md.

BROOKLYN CHAMBER OF COMMERCE,
By WILLIAM GRAF,
Acting Traffic Manager,
26 Court Street,
Brooklyn, N. Y.

BUFFALO CHAMBER OF COMMERCE,
By E. A. MOMBERGER,
Manager, Transportation Department,
Chamber of Commerce Building,
Buffalo, N. Y.

Exhibit 7.

CHAMBER OF COMMERCE OF THE CITY OF NEWARK, N. J.

By KENNETH S. CARBERRY,
Manager, Commerce and Trade Bureau,
20 Branford Place,
Newark, N. J.

COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK, INC.,

By G. E. MACE,
Manager Transportation Bureau,
233 Broadway,
New York 7, N. Y.

CHAMBER OF COMMERCE AND BOARD OF TRADE OF PHILADELPHIA,

By SAMUEL H. WILLIAMS,
Manager, Transportation and Foreign Trade Bureau,
Twelfth and Walnut Streets,
Philadelphia 7, Pa.

ROCHESTER CHAMBER OF COMMERCE,

By FREDERICK W. BURTON,
Director, Department of Transportation,
55 St. Paul Street,
Rochester, N. Y.

THE SHIPPERS' CONFERENCE OF GREATER NEW YORK,

By J. H. PRETZELL, Chairman,
595 Madison Avenue,
New York 22, N. Y.

Exhibit 7.

THE SYRACUSE CHAMBER OF COMMERCE,

By J. V. McMAHON,
Manager, Traffic Bureau,
351 South Warren Street,
Syracuse, N. Y.

UTICA CHAMBER OF COMMERCE,

By MICHAEL J. O'MAHONEY,
Manager, Traffic Department,
8 Elizabeth Street,
Utica, N. Y.

Certificate of Service.

I hereby certify that I have this day served the foregoing document upon all parties in this proceeding listed in the Commission's notice of July 5, 1943, by mailing by first-class mail a copy thereof properly addressed to each party at the address indicated on the notice.

Dated at New York, N. Y., this 13th day of July, 1945.

PARKER McCOLLESTER,
Of Counsel for the parties on whose
behalf this petition is filed.

Exhibit 8.

(Cover omitted)

Before the

INTERSTATE COMMERCE COMMISSION

CLASS RATE INVESTIGATION, 1939.

Docket No. 28300.

CONSOLIDATED FREIGHT CLASSIFICATION.

Docket No. 28310.

PETITION ON BEHALF OF THE STATE OF OHIO.

Now comes the State of Ohio, an intervener herein, and respectfully prays the Commission to reopen its order herein dated May 15, 1945, and thereafter to rehear this proceeding, to reconsider its said order, and to vacate said order or at least modify it insofar as it affects rates on traffic moving intraterritorially within official territory including Illinois or interterritorially to or from that said territory insofar as it increases rates ten percent on traffic moving out of that territory and decreases rates ten percent on traffic moving into that territory. Your applicant further prays for the same relief from, and action by the Commission with regard to, the ultimate findings attached to the end of Parts I and II and the find-

Exhibit 8.

ings attached to Part III of the accompanying decision of the Commission.

Your applicant further prays that said order be stayed pending final ruling on this petition.

This petition is made separately and severally as to each branch and portion thereof.

MEMORANDUM IN SUPPORT OF PETITION.

At every available opportunity throughout the course of this litigation, the State of Ohio has endeavored to impress upon the Commission its three points which in weight and logic of sequence are as follows: (1) the intervention of war between the date of the commencement of these proceedings and the date of the closing of the record herein should result in the dismissal, or at last the postponement, of these proceedings; (2) if, however, the Commission should proceed generally on the merits, nothing in the record justifies any alteration in either the rates or classification of official territory including Illinois; and (3) if alterations *must* be made, a five-step plan for their accomplishment was presented, one of which steps was a traffic test which, incidentally, would at least supplement the lack of data in the record.

The Commission's order of May 15, 1945, crystallizes Ohio's apprehension, and permission is consequently requested to tender this brief discussion of that order in the light of Ohio's three contentions.

(1) The Effect of the War.

The most potent intervener in these proceedings is war-time conditions.

Exhibit 8.

Early in these proceedings the State of Ohio moved the dismissal or postponement of these proceedings on account of the pending war emergency. Later, the first seventeen pages of Ohio's trial brief filed July 30, 1943, were devoted to excerpts from the record illustrating not only the lack of data and manpower sufficient to justify continuance of investigations as important and far reaching as these, but also the complete dissimilarity between pre-war traffic (which constitutes the only fully reliable data in the record) and war-time traffic, and also the complete lack of knowledge of the extent of inevitable changes in post-war traffic. This admonition was repeated in Ohio's exceptions, filed February 15, 1944, to the proposed report in Consolidated Freight Classification, 1939, Docket No. 28310. It was made again on oral argument slightly over a year ago.

These pleas were all promptly denied, but they were not at any time lightly made.

No water carrier was able to testify; the automotive manufacturers were too busy making munitions of war to be able to testify, and said so. Some wonder was expressed why the State of Ohio did not do more to make the record adequate. The answer is that of the first three witnesses sought by Ohio, one has been devoting his time and effort to the Office of Price Administration, the second is still working in the Office of Economic Warfare scarcely a stone's throw from where these proceedings were argued, and the third was and still is an officer in the United States Navy. Even the Commission's own witness, Mr. Jensen, dropped out of these proceedings and entered the armed service of this country. The wonder is how many other corresponding lapses there are in the record.

Exhibit 8.

The difference likewise between the traffic consist which forms the basis of every exhibit but one in these proceedings and the traffic consist which is actually moving is equally obvious. Through no fault of the Commission there is no record in these proceedings sufficient to justify either a permanent order or a temporary one such as that of last May 15. This is a disappointing conclusion but it is no more disappointing than it is undebatable.

The petition of the State of Ohio consequently is that these proceedings including the order of May 15, 1945, be permanently vacated or at least set aside till such time as an adequate record can be made.

(2) The Situation of the Official Territory Rate Structure.

If the preceding hurdle of intervening war-time conditions is overcome, one consequently looks next to the record on its merits. That examination discloses one outstanding and all-important fact: the total lack from St. Louis to Washington of any substantial or meritorious dissatisfaction with the official territory rate structure. Not a single respondent, or shipper or other party from official territory asked that that structure be changed either directly or indirectly; yet over night its rate scale has become too low as a minimum and its classifications are tossed into a mould with two others for no one knows how much recasting. The structure which from the record is not only the one best fitted to the needs of the shippers and carriers alike who use it but also was approved by the Commission a scant twelve years ago has suddenly become the structure most likely to be subjected to the greatest revision. Twelve years cannot wreak that great a change in any rate structure.

420

Exhibit 8.

Since it is beyond the Commission's power to revise a rate structure without a supporting record before it, the State of Ohio is consequently forced to the conclusion not only that both the temporary ten percent increase and the ultimate permanent increase of about fifteen percent in official territory rates are purely arbitrary figures, but also that those increases were made solely in an effort to arrive at a nationally uniform rate structure without subjecting the rail carriers in the less thickly populated parts of the country to irreparable financial loss even though achievement of that goal carries the indirect result that shippers and manufacturers in official territory are in substance being called on to subsidize shippers, manufacturers and rail carriers in other parts of the country,—all in the name of "parity". Incidental credence is lent to this unpleasant conclusion by the fact that although official territory rail carriers were among those who were, only a few months ago denied a temporary increase in their rates when they asked this Commission for it in Ex parte 148, they are now handed a larger increase on a part of their traffic even though they never even asked for it. The question naturally arises whether future divisions proceedings with southern and western rail carriers are not in the offing.

The fundamental reason, however, for Ohio's conclusion is that in the entire record and in the whole decision of the Commission there is not a scintilla of evidence supporting a change either temporary or permanent in rates in official territory (the Commission itself comments on the complete lack of complaint from shippers and respondents within the territory, sheets 46, 122 and 124) unless it is the cost studies submitted by the Commission's staff. Those studies must therefore be examined at this point.

422

Exhibit 8.

Even if we concede for the purpose of discussion that those studies are a distinct advance over any that have preceded them, still there must be something fatally wrong with them when they are not supported by those who would benefit from them. The defect inherent in those studies is that they do not purport to show anything more than average costs, and as between theory and fact the theory of average costs must bow to the unanswerable fact of no dissatisfaction with existing conditions by respondent carriers in official territory. If those studies had been accurate there is no reason why those carriers should not have accepted them; but they didn't and it is extremely illogical to assume that even an advanced theory of averages is better than long experience. To the contrary, there were several witnesses including those presented by the Central Freight Association group whose testimony showed that those carriers rates were safely above all costs including those of pick-up and delivery service.

Those studies do not and cannot show that class traffic in official territory is not paying its way because it is the highest priced traffic moving. They purport to show at most only that less than carload costs on the average exceed income, also on the average; and aside from the fact that no official territory respondent expressed any dissatisfaction with existing rates, it is also in line to point out that even if such a showing was correct it still would not justify the uprooting and revision of the entire rate structure even if rates, contrary to express Commission statement in these proceedings, depended entirely on costs. One does not burn down the house to kill the flea in the basement.

A second fatal defect in those studies is that they do not conform to the Transportation Act of 1940. That act

extended Commission jurisdiction in terms of geographical areas to include entire territories but it did not abolish any proven factors in the establishment of rates, nor did it create any new ones. Yet by ending in averages, those cost studies ignored all territorial differences in the distribution of the rate burden and lumped all costs together into an average on the theory that if given articles do not move in equal volume in all territories they will be sufficiently replaced by others insofar as acceptance of the traffic burden is concerned as to make an average estimate equal an actual outlay. The fallacy of that or any similar theory is that it is obviously wrong unless there is an equal commodity moving an equal distance in an equal volume and equally able to bear an equal share of the traffic burden. The Commission's own decision herein with its discussion of differing traffic consists by territories shows that the distribution of the traffic burden is not and cannot be the same by territories.

The only purpose in ignoring differences in both consist and traffic burden by territories can be to make those differences cease to exist,—i. e., a redistribution of industry by means of the class rate structure, and no such mandate or permission is to be found in the Transportation Act of 1940, or any other act conferring jurisdiction on this Commission. Ohio respectfully submits that the principle that "the law does not attempt to equalize fortune, opportunities or abilities" is as true today as when it was enunciated many years ago in *Interstate Commerce Commission* v. *Diffenbaugh*, 222 U. S., 42, 46, 56 L. Ed., 83, 87, 32 S. Ct. Rep., 22.

The State of Ohio points out that with no semblance of a supporting record, the order of May 15, 1945, temporarily changes upward the official territory rate struc-

ture both intra- and interterritorially, as to both carload and less-carload traffic; and the permanent change ultimately to follow will be even more drastic. At no time in these proceedings has Ohio attempted to suggest or take a stand on what the rate structure or rate level in southern and western territories should be, because that is most especially the interest of the carriers, shippers and parties in those territories. But, Ohio does most respectfully submit that the contemplated changes in the official territory rate structure, carload and less than carload, intra- and interterritorial are materially and substantially erroneous, are without support in the record, and are unduly prejudicial to those in official territory and unlawfully preferential of those in southern and western territories. Even if it be said that there is a cost study to support Appendix 10, there is nothing at all to support a temporary rate increase or a higher minimum within official territory.

If it is necessary to consider these proceedings on the merits in spite of the intervening change due to wartime conditions, it is the second branch of the petition of the State of Ohio that the order of May 15, 1945, be reconsidered and vacated insofar as its provisions affect intraterritorial traffic in official territory and traffic moving interterritorially either to or from official territory.

(3) The Steps to An Orderly Revision.

From the foregoing it is clear that the State of Ohio is not of the opinion that the steps to an orderly revision are in order, or will be for some time to come. If, however, it should be determined to the contrary, those steps are set forth in detail on pages 87-88 of Ohio's trial brief and need not be here repeated. Their efficacy would at least remove the "humps" inherent in the

order of May 15, 1945 at such border and near-border points as Pittsburgh, Cincinnati, Louisville, Evansville.

Respectfully submitted,

HUGH S. JENKINS,
Attorney General of Ohio.

KENNETH L. SATER,
Assistant Attorney General,
Counsel for the State of Ohio.

I hereby certify that on or before July 20, 1945, I mailed in due course of post to each counsel of record a copy of this petition and memorandum.

KENNETH L. SATER.

Exhibit 9.

Before the

INTERSTATE COMMERCE COMMISSION

CLASS RATE INVESTIGATION, 1939

Docket No. 28300

PETITION OF PUBLIC SERVICE COMMISSION OF WISCONSIN FOR RECONSIDERATION AND REARGUMENT OF DECISION AND ORDER OF COMMISSION

Comes now the intervener Public Service Commission of Wisconsin in the above-entitled proceeding and respectfully petitions the Commission to reconsider and grant reargument with respect to the findings and order made in the above-entitled matter, and in support of said petition respectfully shows:

I. That the order of May 15, 1945 in the above-entitled proceeding provides, *inter alia*, as follows:

> *It is further ordered*, That, to remove the unreasonableness in the rates and to bring to the minimum the undue preference and undue prejudice found to exist said respondent common carriers by railroad, according as they participate in the transportation, be, and they are hereby, authorized and directed to increase by 10 percent the existing applicable interstate class rates for freight traffic moving at classification ratings in official territory (including Illinois territory), subject to the qualifications set forth in the report herein, and to maintain the rates so increased as the reasonable rates to be hereafter observed until further order of the Commission.

That the provisions of the paragraph of said order, as above quoted, are unreasonable, unjust and improper in that:

1. The increase in rates thereby prescribed is not supported by fact, or showing of fact in the record,

or by finding of fact in this proceeding, to the effect that the revenues of the common carriers by railroads, whose rates are increased under said provision, are or will be inadequate under existing rates applicable to their service. Such provisions therefore impose unreasonably excessive rates.

2. That such increase of rates is not supported by the finding upon which it purports to be based, namely, the "undue preference and undue prejudice found to exist" in "the relation between the interterritorial class rates applicable from southern, southwestern, and western trunk line territories to official and Illinois territories, on the one hand, and the intraterritorial class rates applicable within official and Illinois territories on the other hand."

3. That the existing class rates, which are thus increased, are neither discriminatory nor violative of section 3(1) or any other provision of the Act, by reason of the alleged prejudice or disadvantage to southern, southwestern and western trunk line territories or shippers therein, and resulting from the differential in the existing class rates in the territories just named on the one hand and the existing class rates in official or Illinois territory on the other hand.

4. That even if such alleged prejudice or disadvantage in a particular territory or territories were violative of the Act in any respect, it could not be lawfully, reasonably or properly removed, by the prescription of excessive or otherwise unreasonable rates in another territory merely because such other territory or the shippers therein may enjoy a preference or advantage by reason of the differential in rates involved.

Exhibit 9-

II. In support of the foregoing contentions this intervener maintains that transportation rates can be properly determined only if they are arrived at and based upon considerations relating solely to the transportation service for which such rates are fixed and required to be charged; that such considerations including essentially the component costs of such service and the value of such service to the persons receiving the same; and that the prescription of transportation rates based and arrived at upon a consideration or purpose of obviating or mitigating the necessary high cost of service furnished by transportation agencies in one section or territory, by or through an increase of adequate rates for lower cost service furnished by another transportation agency in a different section or area, is violative of fundamental principles applicable to the regulation of rates and must result in rates that are excessive, unreasonable and unjust.

This intervener therefore prays that reconsideration be given in the above-entitled case; that reargument be granted with respect to the provision of the order of May 15, 1945 herein prescribing an increase in class rates in official and Illinois territories as herein referred to; and that the Commission make such further order by way of rescission or modification of such provision of said order as it may deem reasonable and just.

Respectfully submitted,

H. T. FERGUSON

H. T. FERGUSON, Chief Counsel
Public Service Commission of Wisconsin
P. O. Address: 720 State Office Bldg.
Madison 2, Wisconsin

Dated at Madison, Wisconsin, July 9, 1945.

Exhibit 9.

Certificate of Service

I hereby certify that I have this day served the foregoing petition upon all parties of record in this proceeding by mailing a copy thereof properly addressed to each party.

Dated at Madison, Wisconsin, this ninth day of July, 1945.

H. T. Ferguson

Exhibit 10.

AMENDED ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 25th day of July, A. D. 1945.

No. 28300

CLASS RATE INVESTIGATION, 1939

No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

Upon further consideration of the facts in the record in the above-entitled proceedings and upon consideration of a petition filed on July 12, 1945, by the respondent carriers by railroad for postponement to April 1, 1946, of the effective date of the order entered in said proceeding No. 28300 on May 15, 1945, and good cause appearing therefor:

It is ordered, That the said order be, and it is hereby, amended by adding after the fifth ordering paragraph two new paragraphs reading as follows:

It is further ordered, That all outstanding unexpired orders, as amended, of the Commission, authorizing or prescribing class rates for the transportation in interstate commerce of property moving at the classification ratings within, and from and to, official territory (including Illinois territory), southern territory, southwestern territory, and western trunk-line territory, as described in the report herein, be, and they are hereby, modified, effective concurrently with the establishment of the rates herein re-

Exhibit 10.

quired to be applied, to the extent necessary to permit the reduced rates, or increased rates, herein required, to be applied.

It is further ordered, That all tariffs or supplements changing rates by authority of this order, which are maintained or held by authority of outstanding orders of the Commission, shall bear on their title page specific reference to this order, as amended.

It is further ordered, That the said order entered in No. 28300 on May 15, 1945, which was by its terms made effective on or before August 30, 1945, upon not less than 30 days' notice, be, and it is hereby, modified to become effective on November 30, 1945, upon like notice, instead of August 30, 1945.

And it is further ordered, That the said petition of respondent carriers by railroad filed July 12, 1945, insofar as it requests postponement of the effective date of the said order of May 15, 1945, beyond November 30, 1945, be, and it is hereby, denied.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

Exhibit 11.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 26th day of October, A. D., 1945.

No. 28300

CLASS RATE INVESTIGATION, 1939

No. 28310

CONSOLIDATED FREIGHT CLASSIFICATION

Upon consideration of a petition filed on October 26, 1945, by the respondent carriers by railroad for postponement to January 1, 1946, of the effective date of the order entered in said proceeding No. 28300 on May 15, 1945, as amended July 25, 1945:

It appearing, That some of the respondent carriers by railroad have encountered mechanical difficulties, beyond their control, in connection with the printing of the tariffs required to be filed by the said order, as amended, and that such respondents will not be able to file their tariffs so as to make them effective on the date specified in the order; and

It further appearing, That it is desirable in the public interest that the tariffs be filed on not less than statutory notice;

It is ordered, That the said order entered in No. 28300, on May 15, 1945, as amended July 25, 1945, which was by its terms made effective on or before November 30, 1945, upon not less than 30 days' notice, be, and it is hereby modified to become effective on January 1, 1946, upon like notice, instead of November 30, 1945.

By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

Exhibit 12.

INTERSTATE COMMERCE COMMISSION

No. 28300
CLASS RATE INVESTIGATION, 1939

No. 28310
CONSOLIDATED FREIGHT CLASSIFICATION

DECIDED OCTOBER 30, 1945

On reconsideration, the findings in No. 28300 with respect to the ad interim class rate revision made in prior report, 262 I. C. C. 447, Part II, page 700, and Part III, pages 702-706, and the order with respect thereto, are modified as follows:

1. Class rates: (1) on coastwise or intercoastal traffic moving to and from the north Atlantic ports (including the Virginia ports); and (2) on coastwise or intercoastal traffic moving through south Atlantic and Gulf ports where such rates are specifically published as coastwise or intercoastal class rates, are excepted.

2. Class rates from and to points in the Southwest, which are subject to the Deming, N. Mex., rates as maxima, (1) where the Deming rates are held as maxima by means of a tariff rule, the rule may continue to apply to the class rates reduced 10 percent; and (2) where the rates are published specifically in amounts per 100 pounds, subject to the Deming rates as maxima, the class rates shall be recomputed on the zone III basis, the rates thus arrived at reduced 10 percent, and further reduced to the Deming rates as maxima.

3. Findings with respect to class rates to or from points on short or weak lines modified to authorize the addition of existing arbitraries, reduced by 10 percent.

4. Certain subnormal class rates applicable within and between southwestern and western trunk-line territories, established to meet intrastate class rates or motor carrier or other competition, excepted in certain respects.

5. Extended zone C in Wisconsin is to be treated as a part of official territory with respect to rates between that extended zone and the remainder of official territory, except with respect to rates between Illinois territory and extended zone C.

6. Class rates governed by the official classification between Owensboro, Ky., and stations on lines of the Louisville and Nashville Railroad in official territory, including Cincinnati, Ohio, and Evansville, Ind., are expected.

7. Reduced class rates not required to be applied over generally unused routes in instances where there are over other routes going commodity, column, or exception rates between the same points.

8. Petitions, insofar as they relate to the interim adjustment, are denied in all other respects.

9. Ultimate findings in part II, page 700, amended by adding to finding 1 thereof, a finding that the intraterritorial class rates, except as noted, within official and Illinois territories, are less than just and reasonable rates.

FIRST SUPPLEMENTAL REPORT OF THE COMMISSION

BY THE COMMISSION:

These two proceedings were instituted upon our own motion, and the original report therein was made on May

15, 1945, in 262 I. C. C. 447. The order entered on that date required the respondent carriers by railroad, during an interim period, to increase class rates 10 percent within official territory and to reduce class rates 10 percent in other territories and on interterritorial traffic (except within and to and from mountain-Pacific territory). By the terms of the order, as amended by order of July 25, 1945, the carriers were required to establish the new rates effective November 30, 1945, upon statutory notice. By order entered October 26, 1945, the effective date was postponed to January 1, 1946, upon like notice.

Certain petitions [1] were filed by respondent carriers and other parties requesting modification of our findings and

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[1] Petitions were filed by the Southwestern Steering Committee on behalf of the States of Arkansas, Kansas, Louisiana, Oklahoma, and Texas; the Commonwealth of Kentucky and the Railroad Commission of Kentucky; the States of New York, New Jersey, Pennsylvania, and Maryland, and various chambers of commerce and commercial organizations in eastern trunk-line territory; the State of Ohio; the Governor of the State of Indiana; the Governors of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island, and Connecticut, and the New England Traffic League et al.; the Corporation Commission of the State of New Mexico; the Public Service Commission of Wisconsin; the Central Territory Rate Conference; the Minneapolis Traffic Association; the North Atlantic Ports Conference; southern industrial interests; the motor carrier interveners; and all the respondent railroads. Replies to one or more of these petitions were filed by the Southern Governors' Conference; the States of Arkansas, Kansas, Louisiana, Nebraska, North Dakota, South Dakota, Oklahoma, and Texas, represented by the Steering Committee for those States, and certain commercial interests therein; the State of Florida, the Railroad Commission of Florida, and certain commercial organizations in Flordia; North Dakota interests, including the Attorney General and Public Service Commission of the State of North Dakota and certain commercial organizations in North Dakota; the American Cotton Manufacturers' Association et al., the Green Bay Association of Commerce et al.; the Wichita (Kans.) Chamber of Commerce; the official territory lines; and the class I western railroad respondents.

order. We have given further consideration to the matters presented in those petitions.

COASTWISE AND INTERCOASTAL CLASS RATES

In our report at page 515, we said:

> Owing to the war, practically all water carriers which have participated in joint rates with the railroads have suspended operations because their vessels have been taken over by the Government for war purposes. The lack of evidence respecting such rates is doubtless due to this fact. As the present record is inadequate upon which to prescribe reasonable and otherwise lawful all-water or rail-water rates, no findings will be made with respect thereto, and they will not be discussed further in this report.

Railroad class rates applicable on interstate traffic to or from the Atlantic and Gulf of Mexico ports, carried from or to those ports by carriers by water in interstate commerce, were not specifically excepted from the interim order. Those rates, referred to as coastwise and intercoastal rates, are not published as joint rates with the carriers by water, and, therefore, are not, strictly speaking, rail-water rates. Respondent railroads request us to modify our interim order so as to except, in certain respects, their coastwise and intercoastal rates from its requirements. The respondent railroads in all three classification territories request us to modify our findings and interim order, so as not to require any change to be made in the class rates specifically published for application on coastwise and intercoastal traffic to or from the south Atlantic and Gulf ports. Specific coastwise and intercoastal class rates are now published between such ports and Ohio River crossings (including intermediate points in southern territory where the Ohio River cross-

ing rates are held as maxima), Chicago, Ill., St. Louis, Mo., and certain territory north of the Ohio River roughly described as lying west of the Chicago-Indianapolis-Cincinnati line.

Generally, the domestic class rates, governed by the southern classification, are applicable to and from southern ports (either with or without the addition of so-called port charges) on coastwise and intercoastal traffic, in the absence of class rates specifically published to apply on that traffic. This situation generally obtains on coastwise and intercoastal traffic between ports and interior southern points, from and to which the specific intercoastal rates do not produce lower rates; also on coastwise traffic from Ohio River to south Atlantic and Gulf ports. As to such class rates when applicable on coastwise and intercoastal traffic, no modification of our interim order is requested.

The existing specifically published coastwise and intercoastal class rates to and from the south Atlantic and Gulf ports are generally the same as the export and import rates from and to the same points, and are made with direct relation to the rates to and from the north Atlantic ports. For example, those so published from Chicago to south Atlantic and Gulf ports are the same as those so published from Chicago to Baltimore, and they are governed by official classification. The same is true of specifically published coastwise and intercoastal class rates from Cincinnati, Ohio.

It is apparent that an increase of 10 percent within official territory and a decrease of 10 percent between points in official territory and the south Atlantic and Gulf ports would disrupt the present relations of the rates to and from the ports. The railroads and the water carriers, and presumably the shippers, desire to retain those rela-

tions. We are of the opinion that their continuance during the interim period will be in the public interest and will be just and reasonable.

Respondent railroads in official and western classification territories have filed a separate petition concerning the coastwise and intercoastal class rates to and from the north Atlantic ports (including the Virginia ports). Coastwise and intercoastal rates to and from the north Atlantic ports are generally the same as the import and export rates. The latter were specifically excepted from our findings and interim order. Respondents state that they made their coastwise and intercoastal class rates to and from the north Atlantic ports the same as the export and import rates in order to maintain the established port rate relations, because from a competitive standpoint this traffic has the same characteristics as import and export traffic.

As between the north Atlantic ports themselves, a 10 percent increase from points of origin in official territory and a 10 percent reduction from western trunk-line territory origins would destroy the present relations. Petitioners in official and western classification territories ask that the report and order be modified so as to eliminate any requirement that the class rates applicable on coastwise and intercoastal traffic moving to and from north Atlantic ports be increased or reduced. This includes domestic class rates applicable on coastwise and intercoastal traffic in the absence of specific coastwise and intercoastal rates. For example, from some points in official territory only domestic class rates are published to Baltimore, and these rates apply also on coastwise and intercoastal, as well as on export and import traffic. In such cases it is contemplated that the old class rates shall continue to apply on coastwise and intercoastal traffic as will as on that which is export or import traffic.

Exhibit 12.

Both petitions are supported by the North Atlantic Ports Conference, an organization of port authorities and commercial organizations representing various north Atlantic ports. The Ports Conference points out that there is no evidence relating directly to rates applicable on coastwise and intercoastal traffic, and that, in addition to disturbing the relations between the rates to and from the north Atlantic ports and those to and from south Atlantic and Gulf ports to the detriment of the former, the report and order, by increasing the rates to and from the north Atlantic ports, will place steamship lines, particularly intercoastal lines, under an additional competitive disadvantage as against competing rail or motor carrier routes.

The only other reply to the petitions is from representatives of the State of Florida and various commercial institutions in that State. That reply concedes that "since the export and import class rates are exempted, perhaps the rail proportional class rates in connection with coastwise and intercoastal traffic should also be exempted from the interim order."

Upon further consideration of the record, and the petitions and replies thereto, we find that our previous findings in Part III, pages 702 to 706, and our interim order should be modified by excepting: (1) Class rates applicable to coastwise and intercoastal traffic moving to and from the north Atlantic ports (including the Virginia ports); and (2) class rates applicable to coastwise and intercoastal traffic moving through south Atlantic and Gulf ports where such rates are specifically published as coastwise and intercoastal class rates.

Exhibit 12.

DEMING, N. MEX., CLASS RATES AS MAXIMA

The southwestern railroads have filed a petition for modification of our findings and interim order respecting class rates to and from points in the Southwest where the Deming, N. Mex., rates are held as maxima. Class rates prescribed in the *Consolidated Southwestern Revision* were in some instances higher than the transcontinental rates applicable to and from Deming. Therefore, the Deming rates were held as maxima. In some instances this was done by means of a tariff rule. In other instances the Deming rate, in cents per 100 pounds, was specifically published for application to and from points in the Southwest.

Obviously both situations should be treated alike in applying the 10 percent reduction required by the interim order. Petitioners ask that our findings and order be modified so as to eliminate any requirement to reduce class rates to and from points in the Southwest where the Deming rate is held as a maximum. The southwestern steering committee in a reply asserts that to grant the petition as presented would not give shippers the benefit of reduced class rates where such reduced class rates would be lower than the Deming rates.

Our findings in Part III, pages 703 and 704, are hereby modified so as to provide that (1) where the Deming rates are held as maxima by means of a tariff rule, the rule may continue to apply to the class rates reduced 10 percent, and (2) where the rates are published specifically in cents per 100 pounds, using the Deming rates as maxima, the class rates should be recomputed on the zone-III basis and the rates thus arrived at reduced 10 percent, and further reduced to the Deming rates as maxima.

Exhibit 12.

RATES TO AND FROM POINTS ON SHORT OR WEEK LINES

Respondent rail carriers have filed a petition seeking clarification of our interim order insofar as it relates to class rates to and from points on short or weak lines. The only reply to the petition is from Florida interests, including State authorities and representatives of various commercial associations. This reply interposes no objections to the petition "for fear that such objections might delay publication of the new rates," but adds "that any order issued in response to the petition should be subject to a proviso that the resulting rates will be in substantial accord with the Commission's findings."

In our original report (page 700), we reserved for later consideration the matter of arbitraries for short or weak lines. Nevertheless, technically both our interim and our ultimate findings apply to rates to, from or between points on short or weak lines as well as to, from or between points on standard lines. As there is as yet no order or effective date in connection with the ultimate adjustment, the omission of any specific findings with respect to the extent to which short or weak lines are entitled to arbitraries higher than the standard basis prescribed is not of immediate importance in connection therewith. Similarly, where, in the interim adjustment, the existing rates are increased or reduced by the full 10 percent prescribed, no complications will result, as both the base rate and the arbitrary will be increased or reduced by the required percentage whether in the tariffs the arbitraries are published separately or included in the rate.

But where on interterritorial traffic or on traffic within western and southern territories, the minimum scale comes into play, the effect is to make a relatively greater

reduction in rates to and from points on short or weak lines now having arbitraries, and to reduce or eliminate such arbitraries, due to the fact that there is no provision for adding any arbitraries in applying the minimum scale. For example, between Boston, Mass., and Valdosta, Ga., a point on a standard line, the first-class rates is $2.38. This rate reduced 10 percent would become $2.14, but as the minimum scale for the distance is $2.40, no change is required and the rate remains unchanged, $2.38. But to Nashville, Ga., a nearby point on the Georgia & Florida Railroad, the present rate is $2.61, a portion of which represents an arbitrary authorized for the Georgia & Florida. If the rate be reduced 10 percent it becomes $2.35, but, as the minimum scale rate is $2.40 under the findings and order, the Boston-Nashville rate becomes $2.40, and the present difference of 23 cents over Valdosta will be reduced to 2 cents. Thus the arbitrary for the Georgia & Florida which accrues exclusively to it is practically eliminated.

Such result was not intended. In order to avoid an unjust result to short or weak lines which have been accorded arbitraries, authority should be granted to add the existing arbitraries, reduced by 10 percent, in applying the minimum scale. However, the petition points out that to readjust the rates precisely in this manner will require considerable time, because in many instances the arbitraries are not separately stated in the tariffs. In the interest of eliminating delay in effecting publication, respondents agree, if permitted, to produce substantially the same result by determining the differences between the existing first-class rates to or from the nearest junction point with the short or weak line and the existing first-class rates to and from points on the short or weak lines, and then to publish new first-class rates to and from the latter points in amounts exceeding the new rates to and

from the junction point by the existing differences reduced 10 percent.

Our findings in Part III on pages 703 and 704 of the report are hereby modified to authorize the addition of the existing arbitraries, reduced by 10 percent, in applying the minimum scale, and the described method of publication will be considered as substantial compliance with the findings and order so modified, subject to later revision in cases where the difference is material.

SUBNORMAL CLASS RATES

The western rail respondents in southwestern and western trunk-line territories have filed a petition requesting modification of our findings and interim order so as not to apply to class rates within and between southwestern and western trunk-line territories which these respondents have published to meet the competition of intrastate class rates required to be published within the borders of various States or voluntarily established to meet motor carrier and other competition. Although not specifically excepted in the petition, it is understood that the request of these respondents does not extend to class rates voluntarily reduced from the zone IV basis to the zone III basis in southwestern territory.

The following tariffs provide interstate class rates which are below the bases proscribed by us in prior class rate revisions:

Agent Marsh's I. C. C. 3627 provides first, multiples of first, second, third, fourth, and one-half of fourth-class rates for distances 200 miles and less within southern Missouri, also between southern

Missouri on the one hand, and Illinois and Kansas on the other hand.

Agent Marsh's I. C. C. 3628 provides first, multiples of first, second, third, one-half of third, fourth, and one-half of fourth-class rates for distances 500 miles and less between Arkansas, Kansas, southern Missouri and Oklahoma.

Agent Marsh's I. C. C. 3631 provides first, multiples of first, second, third, fourth, and one-half of fourth-class rates for distances 200 miles and less between Arkansas, southern Missouri and Oklahoma, also between those points on the one hand, and Illinois, Memphis, Tenn., Texarkana, Bloomberg, Cass and Whatley, Tex., on the other hand, also from northern Louisiana to Arkansas and Bloomberg, Cass, Texarkana and Whatley on the other hand.

Agent Kipp's I. C. C. No. A-3121 provides carload and less-carload class rates between points in Iowa on intrastate traffic also on interstate traffic to the extent indicated in Item 30 of the tariff.

Agent Kipp's I. C. C. No. A-3309 provides carload and less-carload class rates between points in Wisconsin on intrastate also on interstate to the extent indicated in Items 1505 to 1525, inclusive, of the tariff.

Agent Kipp's I. C. C. No. A-3437 provides carload and less-carload class rates between points in Nebraska on intrastate traffic, also on interstate traffic to extent indicated in Items 2001 and 2002.

Agent Kipp's I. C. C. No. A-3582 provides motor compelled less-carload class rates between points in Kansas; between stations in Missouri on Missouri

River and stations in Kansas; between stations in Missouri on the Missouri River, intrastate and interstate.

Agent Kipp's I. C. C. No. A-3418 provides carload and less-carload class rates between points in Minnesota on intrastate traffic; also on interstate traffic to the extent indicated in Item 900 of the tariff.

Agent Kipp's I. C. C. No. A-3402 provides motor compelled less-carload class rates between St. Louis, Kansas City, St. Joseph, Mo., and stations in Missouri; between Atchison, Leavenworth, Kans., and stations in Missouri; between Alton, E. St. Louis, Belleville, Granite City, Ill., and stations in Missouri, also Atchison and Leavenworth, Kans., interstate and intrastate.

The minimum scale prescribed as a part of the interim adjustment will not prevent the reduction of these so-called subnormal class rates, except for the shorter distances. For example, subnormal class rates for distances of 180 miles and less in Agent Marsh's I. C. C. 3627 would not be reduced because they are either as low as, or lower than, the minimum scale, but subnormal class rates published in that tariff for distances in excess of 180 miles would be reduced, and the rates so reduced would be in excess of the minimum scale.

In Kansas, and between points in Kansas, and Kansas City and St. Joseph, Mo., and other points in Missouri between Kansas City and St. Joseph, these respondents established class rates on less-than-carload traffic, classes 1 to 4, inclusive, to meet motor-truck competition. These class rates are published in Agent Kipp's I. C. C. A-3582. All of these rates are lower than the class rates which

we prescribed between those points, as shown by the following table:

Kansas City, Mo., to Salina, Kans.	183 miles
Docket No. 17000, Part 2, first-class rate	$1.13 [1]
Docket No. 17000, Part 2, reduced 10 percent	1.02
Docket No. 28300 minimum rate	.88
Applicable first-class rate	1.07
Applicable first-class rate reduced 10 percent	.96

It will be noted that the subnormal first-class rate of $1.07 is 5 cents higher than the rate of $1.02, the normal class rate reduced 10 percent. If the 10 percent reduction is applied to the subnormal first-class rate of $1.07 it would become 96 cents, or 6 cents lower than the first-class rate prescribed by us reduced 10 percent to $1.02. The minimum scale does not prevent the reduction of the subnormal first-class rate of $1.07 the full 10 percent.

Kansas City, Mo., and Kansas City, Kans., both take the same class rates between those points and points in Kansas. The intrastate class rates would not be subject to our interim order. If the 10 percent reduction were applied to the subnormal class rates between Kansas City, Mo., and points in Kansas, the first-class rate from Kansas City, Mo., to Salina would be reduced to 96 cents, as compared with a first-class intrastate rate of $1.07 from Kansas City, Kans., to Salina.

In Nebraska, following the western trunk-line revision, the railroads applied to the State Railway Commission of Nebraska for an order to make the interstate basis, as prescribed by us, applicable on Nebraska intrastate traffic. The application was approved as to the eastern portion

[1] Including increase authorized in Ex Parte 123.

of the State, but in the zone III portion of the State the Nebraska Commission required the railroads operating therein to establish the zone II scale. Such rates are applicable on Nebraska intrastate traffic, and on interstate traffic between Nebraska stations east and west of Julesburg, Colo., on the Union Pacific Railroad Company, hereinafter call the Union Pacific. They are published in Agent Kipp's I. C. C. No. A-3437.

For example, between Omaha and Sidney, Nebr., class rates on the Union Pacific, applicable on interstate traffic, are subnormal because the only route of that line from Omaha to Sidney is through Julesburg. The Chicago, Burlington & Quincy Railroad Company has an intrastate route between those points. Unless our findings and interim order in this proceeding are modified, the following situation will exist as to class rates between Omaha and Sidney:

Omaha to Sidney, Nebr.	405 miles
Docket No. 17000, Part 2, first-class rate.	$1.73[1]
Docket No. 17000, Part 2, reduced 10 percent	1.56
Docket No. 28300 minimum rate	1.28
Applicable first-class rate	1.67
Applicable first-class rate reduced 10 percent	1.50

The normal first-class rate prescribed by us is $1.73. The Nebraska intrastate rate prescribed by the State Commission is $1.67, a difference of 6 cents. A 10 persent reduction in the normal first-class rate will result in the rate of $1.56, whereas when reduced 10 percent the present subnormal first-class rate would be $1.50, or a difference of 6 cents. The minimum scale rate is $1.28.

[1] Including increase authorized in Ex Parte 123.

Exhibit 12.

What has been stated above as to the class rates between Omaha and Sidney is also true of the class rates between stations on the Union Pacific in Nebraska west of Julesburg and stations on the Union Pacific, Gering, Nebr., and west, which are applicable via the interstate route of the Union Pacific through Egbert and Yoder, Wyo.

The class rates between Menominee, Mich., and points in Wisconsin north of extended zone C, published for the Chicago and North Western Railway Company and the Chicago, Milwaukee, St. Paul and Pacific Railroad Company in Agent Kipp's I. C. C. A-2592, are also lower than the class rates prescribed by us. They were established to meet motor-truck competition.

Subnormal class rates apply between Manistique-Cherry Valley, Mich., on the one hand, and Chicago, Ill., and Milwaukee, Wis., on the other hand. The subnormal first-class rate to Chicago is $1.08 and to Milwaukee 95 cents. The first-class rates prescribed by us are $1.31 to Chicago and $1.13 to Milwaukee. The subnormal class rates were published pursuant to fourth-section relief and do not apply as maxima at intermediate points. Traffic between these points can move wholly within official territory. Compliance with our interim order would result in class rates via the west-side route approximately 20 percent less than via the east-side route because the east-side route class rates would be increased 10 perecent and the west-side route class rates would be reduced 10 percent.

The southwestern steering committee opposes the petition. In some instances subnormal class rates do not alternate with the class rates prescribed by us. The committee contends that therefore to grant the petition will leave in effect rates higher than the so-called normal class rates reduced as provided in this proceeding. However,

it is understood, and these respondents have stipulated, that if the petition is granted they will reduce the subnormal class rates so that in no instance will such rates, subject to western classification as involved in this proceeding, be in excess of the corresponding normal class rates as prescribed by us, subject to the reductions prescribed in our interim order in this proceeding. The steering committee further points out that in many instances key rates applicable intra- and interterritorially have been voluntarily changed by respondents, and assumes that to grant the petition will leave the respondents free to use their own judgment in determining which is a prescribed rate and which is a voluntary rate, and thus escape the prescribed 10 percent reduction. We do not so understand the petition, but we agree that such modification of the findings as may be made should not extend to such situations.

Our findings in Part III, pages 703 and 704, are hereby modified to the following extent: Subnormal class rates named in rail respondents' tariffs designated Agent Marsh's I. C. C. Nos. 3627, 3628 and 3631, and Agent Kipp's I. C. C. Nos. A-2592, A-3121, A-3309, A-3402, A-3418, A-3437 and A-3582, and subnormal class rates between Manistique-Cherry Valley, Mich., and Chicago, Ill., and Milwaukee, Wis., are hereby excepted from our findings in Part III of the original report, subject to respondents' stipulation that in no instance will the subnormal class rates in western trunk-line and southwestern territories exceed the corresponding normal class rates prescribed by us, reduced 10 percent. If there are other similar situations they should be brought to our attention.

Exhibit 12.

RATES TO AND FROM POINTS IN EXTENDED ZONE C IN WISCONSIN

Respondents in official and western trunk-line territories ask that the findings and order with respect to the interim adjustment of class rates applicable between that part of Wisconsin located in so-called "extended zone C" and official territory, including Illinois freight territory, be amended or clarified so as to make it clear that such rates shall be treated the same as rates between zone C in Michigan and official and Illinois territories, viz., be subjected to a 10 percent increase. Green Bay Association of Commerce, joined by various associations and shippers in various cities in extended zone C, opposes the petition.

In our original report official territory is defined (at page 516) as including New England, trunk-line, central, and Illinois territories. The western boundary of official territory consists in part of the west bank of Lake Michigan, including west-bank car-ferry ports, south to Milwaukee, Wis., thence the line of the Milwaukee to Rugby Junction, Wis., thence the line of the Minneapolis, St. Paul and Sault Ste. Marie Railway to Duplainville, Wis., thence the line of the Milwaukee through Watertown, Wis. Western trunk-line territory as defined in the report lies immediately west of this line. Technically therefore our findings and order treat rates between all points in Wisconsin west of the western boundary of official territory and points in Illinois and official territories as interterritorial, which must be reduced 10 per cent subject to the minimum scale shown on page 704. But in *Western Trunk Line Class Rates*, 164 I. C. C. 1, that portion of eastern Wisconsin lying west of the western boundary of official territory and on and east of a line extending from Green Bay to Watertown was termed "extended zone C"

and made subject to the official classification and the same rates as applicable in zone C in Michigan. Thus in effect this small portion of eastern Wisconsin was transferred to official territory. Rates within zone C in Michigan and between that zone and the remainder of official territory are required by our findings to be increased 10 percent. This includes rates between west-bank Lake Michigan points such as Manitowoc and Kewaunee, Wis., which are directly intermediate to Green Bay, Fond du Lac, and other points in extended zone C. For example, the first-class rate between New York and Manitowoc and Kewaunee, now $1.67 will be increased to $1.84. The present rate between New York and Green Bay is $1.72. Inasmuch as the minimum scale for the distance is greater than $1.72, this rate will remain at that figure if the findings and order are left unchanged, leaving a rate 12 cents lower than to intermediate west-bank Lake Michigan ports through which the traffic moves. From Detroit to Manitowoc and Kewaunee the present first-class rate of $1 will become $1.10, but the existing rate of $1.06 to Appleton and Fond du Lac in extended zone C will remain unchanged. The reply of the extended zone C shipper interests take the position that, under the present findings, the rates to west-bank Lake Michigan points would be applied as minima, thus avoiding fourth-section departures. In *Western Trunk Line Class Rates*, the western boundary of official territory is coincident with the western boundary of extended zone C. Therefore, the authority to apply gateway rates as minima would appear to relate to points beyond extended zone C rather than to points within that zone.

Rates between Illinois territory and extended zone C are in a different category from the remaining rates to and from official and Illinois territories in that, in the

sixth supplemental report in the *Western Trunk Line Case*, these rates were made subject to the western classification. Between Illinois and zone I in western trunk-line territory, the class rates are somewhat higher than those for like distances to and from extended zone C, but this situation would be reversed if the rates to and from zone I are reduced and those to and from zone C increased. For example, between Chicago and Oshkosh in zone C, 165 miles, the present first-class rate is 81 cents and to and from Ripon, 168 Miles, in zone I, it is 88 cents. Due to the application of the minimum scale, comparatively few rates between Illinois and zone C would, under our present findings, be reduced, although to and from the eastern part of zone I there will be considerable reductions. If the petition is granted the rates to and from zone C would be increased 10 percent, resulting in rates higher than those to and from points beyond in zone I. For example, the Chicago-Oshkosh first-class rate would be increased to 89 cents and the rate to and from Ripon will be reduced to 84 cents.

Extended zone C in Wisconsin having been placed by us, in the *Western Trunk Line Class case*, in the same category as zone C in Michigan (with the exception of rates between extended zone C and Illinois territory) should be treated the same in this proceeding with the same exception. Therefore our findings in Part III, pages 703 and 704, are hereby modified so as to treat extended zone C in Wisconsin as being embraced within official territory in the matter of rates between points in that extended zone and points in official territory, other than rates to and from Illinois territory.

Exhibit 12.

CLASS RATES BETWEEN OWENSBORO, KY., AND POINTS IN OFFICIAL TERRITORY

The Louisville & Nashville Railroad Company seeks modification of the findings and order relating to the interim adjustment so as to eliminate therefrom any requirement that certain truck-competitive class rates governed by the official classification applying between Owensboro, Ky., and stations on the Louisville & Nashville in official territory, also Cincinnati, Ohio, and Evansville, Ind., be reduced. Although Owensboro is on the Ohio River, it was treated in the *Southern Class Rate Investigation* as a point in southern territory, and rates to and from points in official territory were made on the interterritorial basis generally used between official territory and the South. This is because there is no railroad bridge at Owensboro and railroad traffic to and from that point must move through some gateway such as Evansville or Louisville in reaching official territory. Thus the prescribed rates are subject to the southern classification and made on the interterritorial basis.

In 1940 a highway bridge was constructed at Owensboro and motor carriers established class rates between Owensboro and certain points in official territory subject to the official classification. By fourth-section orders Nos. 14357 of August 26, 1941, and No. 14594 of April 16, 1942, the Louisville & Nashville was authorized to meet such rates without reducing rates from and to intermediate points in southern territory east and west of Owensboro, subject to the conditions that such rates should not be lower than the rates of the motor common carriers and that the prescribed rates subject to the southern classification should continue to apply alternatively therewith. It is to these rates subject to the official classification that the petition relates. No one questions that the rates sub-

ject to the southern classification should be reduced 10 percent subject to the minimum scale. Petitioner points out that it is between two fires in that, technically speaking, the rates published by authority of the two fourth-section orders are interterritorial and therefore must be reduced in the manner prescribed for interterritorial rates in general, but it is prohibited from reducing such rates by the condition in the fourth-section order that it shall not maintain rates lower than those of the motor carriers. The only reply to the petition is from the State of Florida and certain commercial organizations in that State, which reply interposes no objection to the relief sought.

There is no specific evidence in the record with respect to these particular rates. Few, if any, other points in southern territory have the benefit of two sets of rates, one subject to the official classification, and the other to the southern, thus enabling shipments to move on the lower of the two bases. Our findings in Part III, pages 703 and 704, are hereby modified so as to eliminate any requirement that these class rates subject to the official classification be reduced.

COMMODITY, EXCEPTION OR COLUMN RATES V. CLASS RATES

The Southwestern steering committee, representing various southwestern and middle western States and commercial interests therein, asks that the report and order be amended to require that in instances where the prescribed maximum class rates are lower than commodity rates, or rates based on exception ratings, such maximum class rates shall apply. As stated on page 454 of our original report, this proceeding includes all rates determined by ratings in the four classifications, irrespective of whether the ratings are stated under the regular numbered or lettered classes or as percentages of first class.

but none other. It does not embrace exceptions to the classifications. To require what the Southwestern steering committee asks would apparently go beyond the issues.

The rail respondents have filed a petition requesting that our findings and order prescribing the interim adjustment be amended sufficiently to permit the carriers to include in their tariffs provisions that the new class rates will not apply on particular shipments when there is in effect a commodity rate, or a rate resulting from a classification exception or column rating, from and to the same points via any route. The petition points out that as a result of practical difficulties few class rate tariffs contain complete routing. Class rates generally either apply over all routes composed of lines parties to the tariff, or over all routes not exceeding certain general mileage limitations, and therefore often apply over seldom-used routes involving numerous transfers from one carrier to another. Where commodity or column rates have been established, in most instances routing has been provided, designed to hold the traffic to workable, reasonably direct routes involving a minimum of transfers. Over routes over which commodity rates or exception or column rates apply on certain commodities, the corresponding class rates have no application, but over other routes, which generally are not used for the transportation of such commodities, the class rates apply.

Where the class rates are reduced 10 percent, as required in this proceeding, the new rates, in some instances, will be lower than the commodity or column rates. This is particularly true where the commodity rates are on group bases and the class rates are on a distance scale basis. If the reduced class rates are allowed to become effective over the unused routes, ship-

pers will be able to nullify the commodity or column rates either by specifically routing their shipments over unused routes over which such commodity or column rates do not apply; or by delivering their shipments to carriers unrouted, thus placing upon the carriers' agents the burden of determining whether there is any route over which there is a class rate lower than the commodity or column rate now used. In the latter instances, even if shipments are transported over the shorter and more generally used routes, the initial carrier may be called upon to shrink its earnings sufficiently to bring the charges on the shipment down to those resulting from the class rate over another and unused route.

Origin and destination differentials will in some instances be disturbed and groupings broken up if the reduced class rates are to apply in instances where they happen to be lower than commodity or column rates. Generally speaking, estimates of the immediate effect of the interim adjustment upon the carriers' revenues have been based on the assumption that the new rates will not apply on traffic which is not now moving on class rates subject to the ratings in the classifications, but, if the petition is denied, to all practical purposes the new class rates will apply in all instances where the charges resulting from their application are lower than those resulting from commodity or column rates between the same points. Disturbance of origin differentials brought to our attention is illustrated by the rates on compressed carbon black in carloads from Pampa, Tex., and Fairbanks, La., to northern and eastern points. Pampa is in the Amarillo group and Fairbanks in the Monroe group. Using Pittsburgh as a representative destination, the existing commodity rate from Pampa, $1.03, is lower than the reduced fifth-class rate, $1.05, but from Fairbanks, the commodity

rate of 92 cents is 3 cents higher than the reduced fifth-class rate of 89 cents. The rates on carbon black from Pampa and Fairbanks were established pursuant to a decision of division 2 in *National Gas Products Assn.* v. *Akron, C. & Y. Ry. Co.*, 232 I. C. C. 619. In that proceeding a differential of 11 cents for the Amarillo group over the Monroe group to practically all destinations in the Northeast was approved, which differential adjustment would be disturbed under our decision in this case if left unchanged. In the *National Gas Products Assn. case*, division 2 also found commodity rates from the Monroe group not unreasonable even though they exceeded the class rates, this conclusion being based on the fact that the commodity rates at that time applied both on compressed and uncompressed shipments and the commodity rates were much lower on uncompressed carbon black than the class rates so that the adjustment as a whole was found not unreasonable. Respondents here ask us to apply the same principle as was followed in the *National Gas Products case* and avoid breaking down differential and grouping adjustments such as that on carbon black.

Florida interests oppose the petition. These interests take the position that the requested modification would disregard the long-established principle that commodity rates which exceed class rates on the same article are *prima facie* unreasonable; would have the effect of closing routes which are now available and deprive shippers of the privilege of routing their traffic in violation of section 15(8) of the act; and that the allegation in respondents' petition that unless it is granted they will be deprived of their long haul as permitted under section 15(4) of the act is erroneous. To grant the petition would not have the effect of closing any routes but would merely avoid

unnecessary reductions in rates which today are not being used and which generally apply over routes over which traffic in general does not ordinarily move.

We recognize that further consideration will have to be given by the carriers and by us to commodity, exception, or column rates that will hereafter be higher than the reduced class rates, but it is our view that each situation should be considered on its merits rather than by forcing the application of the reduced class rates in all cases where there are now commodity, exception, or column rates. Such result was not contemplated. Our findings in Part III, pages 703 and 704, are hereby modified so as not to require the application of the reduced class rates, prescribed in Part III, over generally unused routes, where there are over other routes going commodity, column, or exception rates between the same points.

CLASS RATES TO AND FROM THE LEXINGTON AND BIG SANDY BRANCHES OF THE CHESAPEAKE AND OHIO RAILWAY IN KENTUCKY

The Commonwealth of Kentucky and the Railroad Commission of Kentucky, by petition, seek the following modifications of our findings and order prescribing the ad interim adjustment:

1. Elimination of the proposed increases in rates within official territory, pending revision of classification ratings and final revision of the rates.

2. Addition of a finding requiring the establishment of class rates to and from points on the Chesapeake and Ohio Railway in Kentucky not higher than the basic class rates applicable within official territory.

In Kentucky the Chesapeake and Ohio has one main line (Ashland to Cincinnati) and two branch lines, the

Exhibit 12.

Lexington Branch from Ashland, Ky., to Lexington, 124 miles, and the Big Sandy Branch from Kenova, W. Va., to Elkhorn City, Ky., 134 miles, where it connects with the Clinchfield Railroad. Pikeville, Ky., is a typical point on the Big Sandy Branch. The Chesapeake and Ohio also operates west of Lexington over the line of the Louisville & Nashville Railroad to Louisville, Ky., but has no freight service to or from points between Lexington and Louisville.

Although the petition technically includes the main line as well as the branches, it is evident that petitioners are primarily concerned with the class rates between Kentucky points on the branch lines of the Chesapeake and Ohio and points in official territory. All such rates are now, and for many years have been, subject to the official classification, except the rates between Lexington and Winchester and points in central and Illinois territories, which latter are subject to the southern classification. Between all the points where official classification now applies, class rates were prescribed in *Eastern Class Rate Investigation*, 164 I. C. C. 314, on the same basis as in official territory with the addition of differentials specified next below, except that the mileages used in computing the rates are those over the Chesapeake & Ohio to Ashland and not over lines such as the Louisville & Nashville through Cincinnati. In Finding 7 at Page 406, Appendix F arbitraries were authorized on the Ashland-Louisville line, and in Finding 8, at Page 408, Appendix I arbitraries on the Big Sandy Branch. The Appendix F first-class arbitraries range from 2 cents up to 6 cents for hauls of 140 miles and over 95 miles. The Appendix I arbitraries are much higher, ranging from 8 cents up to 38 cents for distances over 100 miles. Both the Appendix F and Appendix I arbitraries have since been increased 10 per cent under Ex Parte 123 so that the authorized

first-class arbitrary to Lexington is today 6 or 7 cents and to Elkhorn City 41 or 42 cents. Key-point rates were prescribed in Appendix J, Pages 473-475, between Lexington and Winchester, on the one hand, and points in trunk-line and New England territories, on the other hand. These key-point rates are approximately 6 cents higher than rates between trunk-line and New England territories and points in Ohio or Indiana for comparable distances.

The class rates published and now in effect between points on the Lexington branch and points in official territory are substantially on the basis approved in the *Eastern Class Rate Investigation* plus the 10 percent increase of 1938, but those to and from points on the Big Sandy Branch are considerably lower than the authorized rates, but somewhat higher than if made on the Eastern Scale.

Class rates between Lexington and Winchester, on the one hand, and central and Illinois territories, on the other hand, have never been subject to the Official Classification. Pursuant to *Southern Class Rate Investigation* rates to and from these two points were established on the same basis as generally applicable between the South and central territory. Subsequently, rates between Kentucky and official territory were reduced in *Commonwealth of Kentucky* v. *Ahnapee & W. Ry. Co.*, 213 I. C. C. 297. The present rates between these two points and central and Illinois territories are on the basis prescribed in the latter case, subject to the southern classification. The first-class rates are, roughly, 15 percent higher than the Eastern scale. Due to differences in class percentages and classification ratings, it is impractical to estimate the average differences on all the classes.

In a supplemental report in *Eastern Class Rate Investigation*, 171 I. C. C. 481, at Page 510, a petition filed

by the Lexington Board of Commerce was considered. That petition asked that the findings be modified so as to require the use of the Cincinnati, New Orleans and Texas Pacific Railway Company in making rates between Lexington and points in central territory. It also sought modification of the key rates prescribed between Lexington and points in trunk-line and New England territories so as to make them no higher in any case than the rates to and from Louisville. The petition was denied.

Our findings and order in this proceeding require a 10 percent increase in class rates within official territory. Petitioners assume that as all the rates covered by their petition other than those between Lexington and Winchester and central and Illinois territories were prescribed in the *Eastern Class Rate Case*, they necessarily must be considered as intraterritorial in official territory and increased 10 per cent. This conclusion is not free from doubt inasmuch as both the Lexington and Big Sandy lines of the Chesapeake & Ohio are physically outside of official territory and were treated in *Western-Southern Class Rates* as being within southern territory and rates were prescribed to and from Western trunk-line territory on the same basis as to and from points on southern lines in Kentucky and other southern States. Nevertheless, we resolve the doubts in favor of the construction placed upon our prior report by petitioners.

They show that a 10 percent increase in the first-class rate between Lexington and New York, now $1.63 (the same as the eastern scale for the distance), would make that rate 11 cents higher than the first-class rate between New York and Frankfort, Ky. (which is west of Lexington on the Louisville & Nashville Railroad). Class rates between Frankfort and New York are subject to the southern classification and, due to the minimum scale,

will not be changed under the interim order. Between Danville, Ky. (south of Lexington) and Pittsburgh the first-class rate of $1.20 (subject to the southern classification) will not be changed under the interim order but the first-class rate to and from Lexington ($1.18) subject to the official classification will be increased to $1.30. Thus on first class both of these situations would involve fourth-section departures. But due to the differences in classification that would not be true of classes below third. For example, the new fourth-class rate between Lexington and New York would be 90 cents whereas the fourth-class rate between Frankfort and New York will remain 92 cents. The existence of a higher first-class rate from Lexington than from Frankfort does not necessarily demonstrate that the class rates on the average would become higher. On the other hand, the class rates between official territory points and Cincinnati are subject to the official classification and will, under our findings, be increased 10 per cent. The present first-class rate between New York and Cincinnati is $1.50 which will become $1.65 so that if the Lexington rate of $1.63 is left unchanged it will be lower than the Cincinnati rate and fourth section departures will occur over routes through Cincinnati. The first-class rate between New York and Louisville is $1.64 which will be increased to $1.80 so that if the Lexington rate is left unchanged it will be 17 cents less than the Louisville rate.

Petitioners also show that class rates between the Lexington and Big Sandy Branches and points in official territory will in many instances be higher under the interim adjustment than the maximum rates under the final adjustment (Appendix 10 scale). But that will also be true of practically all other class rates between points in official territory which in *Eastern Class Rate Investigation* were made higher than the eastern scale basis,

such as the rates between points in zone C in Michigan and between points in zone B in New England.

The only reply to the petition is from Florida interests. They oppose the petition insofar as it seeks postponement of the effective date of the order, and insofar as it seeks any modification of the requirement that rates in official territory be increased. It takes no position with respect to the local issues raised by the petition affecting points on the Chesapeake & Ohio in Kentucky.

Petitioners' first prayer will be disposed of in connection with other petitions which seek elimination of the 10 percent increase in official territory. The second prayer asks for the prescription of specific rates to and from the particular points in which petitioners are interested, namely, class rates to and from points on the branch lines of the Chesapeake & Ohio in Kentucky. In effect, petitioners ask us to modify certain findings in the *Eastern Class Rate Investigation* to the extent that they resulted in higher rates on these particular branch lines than were prescribed for official territory generally. Those findings, however, were based upon evidence which related not only to the general problem of branch-line and short-line arbitraries, but which dealt specifically with the traffic and transportation conditions on these particular branches of the Chesapeake & Ohio. In prescribing the arbitraries which petitioners now seek to have removed we pointed out in our report in the *Eastern Class Rate Investigation* the necessity of exercising care in fixing the relations between rates to and from these branch lines and rates to and from other points in the same area located on main lines. The record in the instant proceeding does not, in our judgment, contain sufficient evidence dealing specifically with the branch-line adjustments referred to in the Kentucky petition to

justify us at this time in undertaking to modify the conclusions previously reached in the *Eastern Class Rate Investigation.*

Other Petitions

In addition to the petitions heretofore discussed, others have been filed by various States, State regulatory commissions, shipper interests, railroad respondents in the western district, and by carriers by motor vehicle. Many of these request postponement of the effective date of the order, reconsideration, reargument, further hearing, and modification of the findings and order with respect to the interim adjustment and related matters in the report, as well as the so-called permanent adjustment based upon a uniform classification. We will consider here only the portions of the petitions which relate to the interim adjustment.

The principal objection made by northern States and shipper interests in official territory to the interim adjustment is to the requirement that class rates within such territory be increased 10 percent. They contend that we lack authority to require that increase without a finding that the present rates are not compensatory, or less than minimum reasonable rates and, therefore, unlawful; that the record does not warrant a finding that the class rates within official territory are unreasonable, or a finding that such rates are unduly preferential; and that, even if findings of undue preference and undue prejudice are warranted, we lack authority to require the unlawfulness in the rates to be removed as required in our order, and must afford the carriers an alternative as to the manner of removal.

The petition for reargument and reconsideration filed by the Minneapolis Traffic Association, also questions the

legality of our findings under section 3, and our failure specifically to find that the class rates in official territory are less than reasonable rates. That petition contends further that we erred in prescribing one scale of class rates for less-than-carload traffic and carload traffic. A similar contention is discussed in connection with the petition of the motor carrier interveners. The Minneapolis Traffic Association asserts that the present class rates between Minneapolis and points in Illinois and official territories as prescribed in the western trunk-line class rates revision are unreasonable and that the record warrants prescription of the present official scale of class rates to and from points in official and Illinois territories and upper Michigan, from and to points in Northwest territory.

It is not necessary again to review the evidence as to the unreasonableness of the class rates brought in issue in these proceedings, or as to the undue preference and undue prejudice caused by and resulting from such rates, which we have found to exist. Having made the findings of unlawfulness, we have authority under section 15(1) of the Act and under section 5(b) of the Transportation Act of 1940, to prescribe the method for removing such unlawfulness, and to prescribe the rate levels or the rates which we find to be necessary to remove it. We may, by order, prescribe maximum or minimum or maximum and minimum rates to remove any unlawfulness, and such order need not provide for an alternative method.

In support of the contention that an alternative method of removing undue preference and undue prejudice must be provided, petitioners refer to *Texas & Pacific Ry. Co. v. United States*, 289 U. S. 627, in which the Court stated that "where an order is made under section 3, an alternative must be afforded". In a footnote to that statement, however, the Court said: "This is not true of an order

pursuant to Sec. 15(1) prescribing maximum or minimum or maximum and minimum rates; but the present orders were not entered under that section". See also *Youngstown Co.* v. *United States,* 295 U. S. 476.

In requiring an increase in rates to remove unlawfulness we are not required first to find that existing rates, or proposed reduced rates initiated by carriers, are not compensatory. See *Petroleum between Washington, Oregon, Idaho, Montana,* 234 I. C. C. 609. We found in that proceeding that certain proposed reduced rates were compensatory, considering all costs, but that they were below a minimum reasonable level and hence unlawful. The order in that proceeding was sustained in *Scandrett* v. *United States,* 32 Fed. Supp. 995, and the judgment was affirmed by the United States Supreme Court in 312 U. S. 661. See also *Jefferson Island Salt Mining Co.* v. *United States,* 6 Fed. (2d) 315.

In the instant proceeding, in dealing with the interim adjustment, pages 702-706 of the report, we stated that our general findings and conclusions emphasized the importance and desirability of bringing the several intraterritorial freight-rate structures closer together in level and more upon the same pattern or scheme. We also emphasized the importance and desirability of removing as many differences as possible between the interritorial rates of the respondents and the intraterritorial rates which they maintain. The differences in such rates and the effect upon the welfare of carriers, producers, shippers, consumers, and upon the welfare of localities, districts, regions, and territories were fully discussed in the report. The costs of service were considered, together with the consist of traffic, the distribution of the general rate burden, rate and revenue comparisons, and other matters. Our conclusions were that the intraterritorial

class rates within official and Illinois territories, as well as within the other territories dealt with, were unjust and unreasonable and that the relation between the interterritorial class rates from such other territories to official and Illinois territories, on the one hand, and the intraterritorial rates within the latter territories, on the other, gives and causes, and will continue to give and cause, an undue and unreasonable preference and advantage to official and Illinois territories as a whole and shippers and receivers of freight located therein, and subjects, and for the future will subject, the other territories as a whole and the shippers and receivers of freight located therein to undue and unreasonable prejudice and disadvantage.

Our general power under section 15 (1) of the act to order the removal of any unlawfulness in rates found to exist after full hearing has been supplemented and reinforced, insofar as this particular investigation is concerned, by section 5(b) of the Transportation Act of 1940. After authorizing and directing us to institute an investigation of rates between points in one classification territory and points in another such territory, or within a territory, we are specifically empowered by that provision "to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist." In reaching our conclusions as to the necessity for increases in official and Illinois territories, and reductions in the other territories and interterritorially, we gave consideration not only to the factors previously mentioned, but also to the rates of return of the carriers in the respective territories and to their ability to render efficient service. The interim adjustment, as previously explained, was the initial step in the ultimate revision of the class rate structures found to be unlawful.

Exhibit 12.

We are convinced from the evidence in these proceedings that the present class rates within official and Illinois territories are below a just and reasonable level and should be increased as a part of the adjustment, to remove the unlawfulness in such rates, in respect of both their unreasonably low level and their unduly preferential character. We are of the opinion that our findings as to those rates are sufficiently stated in the prior report, but to remove any doubt, we find that the class rates within official and Illinois territories are less than just and reasonable rates, with the exceptions as stated in the prior report and in this report, and therefore unlawful, as well as unlawful because of their unduly preferential character, as more fully stated in the prior report.

Some of the petitions present as an additional reason for reopening these proceedings, particularly with respect to the interim adjustment, for further hearing or, at least, for oral argument, the fact that no proposed report was issued in docket 28300. We have given consideration to the arguments submitted in support of that request. In view of the extensive hearings already had, the briefs filed, the oral argument, the numerous petitions filed for reconsideration and the replies thereto, we are of the opinion that the lack of service of a proposed report did not result in depriving any party of its right to a full hearing.

PETITION OF CERTAIN SOUTHERN INDUSTRIAL INTERESTS

Certain industrial interests,[2] located in southern States, request reconsideration and modification of our findings

[2] Consisting of a textile company and several marble manufacturers in eastern Tennessee and certain iron, asphaltic limestone, and lumber interests in Alabama, Georgia, Mississippi, and North Carolina.

and order upon the ground that they are not supported by the record. These interests contend that rates in the South have followed a pattern different from that followed in other territories, that the present class rate structure is well adapted to the economic needs of the South, and that the findings and order in these proceedings will result in competitive relations less favorable for southern shippers and more favorable for northern shippers. The main objection raised by these petitioners is to the finding that class rates should be uniform throughout the territory included in docket 28300. This matter has been fully considered in our report. The petition, in our judgment, does not present sufficient grounds for reconsideration.

PETITION OF WESTERN RAIL RESPONDENTS.

The principal contentions of the western rail respondents are that the record does not warrant findings of undue preference and undue prejudice; that the immediate effect of the interim adjustment will be a substantial loss of revenue; that the revenue needs of the western rail respondents are greater than those of the eastern rail respondents; that the favorable earnings of the western railroads in the past three or four years have been due to war-time traffic conditions which may not properly be considered as criteria for post-war traffic; that the effect of the reduction in class rates will be greater on western lines; that the reductions will eventually have the effect of bringing about reductions in commodity and exception rates, thus increasing the revenue loss; and that, although our order does not apply to any part of mountain-Pacific territory reductions will have to be made in some of the class rates to, from, and within that territory to harmonize such rates with the reduced rates prescribed.

Exhibit 12.

All of these questions were considered by us in arriving at our original conclusions. Making due allowance for a substantial decline in traffic from the war peak and for the fact that in the decade preceding 1940 the earnings of the western rail respondents were relatively low, nevertheless, insofar as the prospects of traffic and revenues in the immediate future can be foreseen, there is no reason to conclude that the interim adjustment will have any serious effect upon those respondents.

Intrastate class rates generally in most of the western States, and many of the interstate class rates in western territory, are already lower than the interim basis prescribed in our prior report. That is clearly shown in the prior report and is substantiated by the petition filed by the western rail respondents, dealt with elsewhere in this report, for modification of our order respecting so-called subnormal class rates. These respondents cannot consistently maintain these so-called subnormal class rates and continue to maintain the relatively high basis of interstate class rates formerly prescribed by us as maximum in the western and southwestern class rate revisions. The comprehensive record made in this investigation is also convincing that the extent to which the level of those maximum class rates exceeds the levels of class rates in the South and East, particularly the latter, is excessive and is greater than is warranted by the differences in average costs and average freight rate levels.

These respondents assert, as do certain other petitioners representing eastern territory interests, that there is no evidence of injury or damage to particular shippers, and that therefore there can be no finding of undue or unreasonable prejudice or disadvantage in violation of section 3(1). As pointed out in our original report, section 3(1) is not narrowly limited to individual shippers,

but applies also to regions and territories. Nothing presented by any of the petitioners convinces us that no undue prejudice and preference results from the unduly wide differences in class rates that now exist in the West as compared with the East, and especially locally within the East as compared with the interterritorial class rates on which industries of the West must ship if they are to market their goods in the East. In order to sustain a finding of undue prejudice and preference it is not necessary that damages in a legal sense be shown to have been sustained by individual shippers.

The record does not support the contenton that the revenue needs of the western rail respondents with respect to their class-rate traffic are greater than those of the eastern rail respondents. From the carriers' reports to us for the years 1942, 1943, as shown in our original report, and 1944, it clearly appears that there is a greater need for revenue by rail carriers in the eastern district as compared with rail carriers in the western district or in the southern region. The report shows also that a much larger percentage of the total traffic in the eastern district moves on class rates than in the western district or the southern region.

PETITION OF MOTOR CARRIER INTERVENERS

In their petition the motor carriers request us (1) to suspend our order indefinitely insofar as it requires the rail carriers to reduce their less-than-carload class rates by 10 percent, or (2) to modify the order by restricting the less-than-carload rates prescribed as maxima in the interim adjustment so as to limit them to station-to-station rates only and to exclude pick-up or delivery service under such rates without prejudice to the establishment by the rail carriers of higher door-to-station,

station-to-door, or door-to-door class rates. Replies to the petition were filed by American Cotton Manufacturers Association and other textile interests in the South; by the Southern Governors' Conference; by the State of Florida and Florida interests; by the Southwestern steering committee; by rail carriers in official territory; and by other interests.

The petitioners contend that our finding that the less-than-carload class rates should be reduced, except in official territory, is in conflict with our finding on page 697 of the original report, based upon the cost data, that less-than-carload traffic generally is not bearing its proper share of the costs of transportation. That finding was based on operations of the railroads in 1939 when the average load per car of less-than-carload shipments amounted to only 4.3 tons in the West, 5.5 tons in the South, and 6.4 tons in the East including Pocahontas and New England territories. Since then there has been a substantial increase in the average loading of such shipments which has materially decreased the unit costs attributable to less-than-carload traffic. The increased loading was brought about under war-time conditions, but it does not follow that in the post-war period, especially in the immediate future, loadings will decline to the levels of 1939.

The cost data on less-than-carload traffic relate to such traffic as a whole and not solely to that which moves on class rates. In appraising the figures it must be borne in mind that much of this traffic does not move on class rates, but on exception rates and commodity rates. Obviously, the class-rate traffic bears the highest rates. Consequently, even if under present conditions less-than-carload traffic, as a whole, in the West and South is not paying its proper share of the costs, it is possible that such result is due in

a large measure to the maintenance of exception and commodity rates. In any event, data based only on averages for all this traffic do not necessarily demonstrate the impropriety of reductions in the highest level of rates. Even as to class rates on less-than-carload traffic, the record shows that in western trunk-line and southwestern territories many intrastate class rates and interstate class rates are maintained which are lower than the corresponding reduced interstate class rates required by our interim order.

There is little support for the proposals of the motor carrier interveners that separate scales of class rates on less-than-carload and carload traffic be established. It is true that to widen the difference between less-than-carload class rates and carload class rates would not necessarily mean the use of separate scales, meaning by that scales having different progression. But unquestionably to make a 10 percent reduction in carload class rates in the South and West while leaving the less-than-carload class rates unchanged would materially affect the competitive relations between shippers shipping in less-than-carload quantities compared with those shipping in carloads. There is no evidence upon which the extent of disadvantage that would result to l. c. l. shippers or the extent to which commercial and economic conditions would be disturbed thereby may be determined.

There is little direct evidence in this record with respect to pick-up and delivery on less-than-carload traffic. The cost of that service is not definitely shown. Such service was not included in transportation service under the class rates heretofore prescribed by us in our class-rate revisions as maxima in the West and South and interterritorially. The railroads in the southern and western territories began to provide the service to a lim-

ited extent in 1931. Pick-up and delivery had been furnished, however, long before that time at certain points in official territory. Extension of the service to its present scope has been due to the rail carriers' efforts to meet motor carrier competition. The history and development of pick-up and delivery are discussed in *Pick-Up and Delivery in Official Territory,* 218 I. C. C. 441 (decided October 13, 1936). In that proceeding we found justified respondents' tariffs then in effect, and also respondents' proposed tariffs, which provided for pick-up and delivery on less-than-carload shipments in official territory, subject to a minimum rate of 45 cents per 100 pounds. The proposal of the motor carrier interveners to restrict the rates prescribed in our report and order in the instant proceeding so that they would apply only to station-to-station service would in effect reverse our findings in *Pick-Up and Delivery in Official Territory, supra.* We would not be justified upon the record here in so restricting our order. Moreover, numerous maladjustments in rates would result by such a restriction because pick-up and delivery services would remain available on a large volume of traffic that moves on exception and commodity rates. However, respondents will be expected to give careful consideration to the rates maintained by them on less-than-carload traffic with a view to making readjustments in ratings or rates, as promptly as possible, which will insure that the rates on such traffic are on a compensatory level. Traffic moving on exceptions, column, and commodity rates, as well as pick-up-and-delivery services accorded less-than-carload traffic, should be so studied.

NEW MEXICO

The State Corporation Commission of New Mexico requests further hearing, reconsideration, and modification

of the findings and order so as to place New Mexico, or at least the eastern portion thereof, on a parity with Zone IV in Texas. New Mexico is in mountain-Pacific territory. The rates within, and to and from, that territory were not in issue in docket 28300 and, therefore, no findings were made or can be made with respect thereto in that proceeding.

FOURTH SECTION RELIEF

Upon application of all railroad respondents in No. 28300, division 2 entered a fourth-section order, No. 15410, modifying all outstanding unexpired fourth-section orders, as amended, which grant relief from the long-and-short-haul provision of section 4, of the act, over all-rail, rail-water, and rail-motor routes, covering class rates for interstate transportation of property moving within southern, official (including Illinois territory), southwestern, and western trunk-line territories, and interterritorially between those territories, as described in the report, so as to provide that the relief authorized in such orders shall also apply to class rates constructed on the bases prescribed or approved, or determined in relation to those prescribed or approved, in this proceeding, together with a proviso that such class rates may be applied over the same routes over which the class rates in effect immediately prior to the effective date of our order may be applied.

RAIL-WATER RAIL-WATER-RAIL CLASS RATES

By order of July 25, 1945 we amended our order of May 15, 1945 by modifying all outstanding orders to the extent necessary to permit the reduced or increased class rates to be applied. In order that corresponding changes may be made in the lake-rail and ocean-rail class

rates, our orders of May 15, 1945 and July 25, 1945 will be amended so as to modify outstanding unexpired orders fixing rail-water and rail-water-rail class rates to the extent necessary to make corresponding changes in those rates.

We have given consideration to all other matters presented in the numerous petitions for reconsideration, modifications of the findings and order, further hearing and argument, and for postponement of the order, and the replies thereto. The petitions insofar as they relate to the interim adjustment are denied, except as stated in this report.

In a general readjustment as comprehensive as this, it is not practicable to attempt to revise individual rates. The findings in our prior report and in this report are made without prejudice to further consideration of individual rate situations in instances where it is shown that such revisions may be necessary; and without prejudice to the filing of tariffs by respondent carriers proposing changes in individual rates, or rates on particular commodities, subject to possible suspension.

SUMMARY OF MODIFICATIONS OF AD INTERIM CLASS RATE REVISION

PART III OF ORIGINAL REPORT

Our findings in Part III of the original report (pp. 702-706) are modified as follows:

1. Class rates: (1) on coastwise or intercoastal traffic moving to and from the north Atlantic ports (including the Virginia ports) and (2) on coastwise or intercoastal traffic moving through south Atlantic and Gulf ports where such rates are specifically published as coastwise or intercoastal class rates, are excepted from our find-

ings in Part III of the original report and from our interim order.

2. Class rates from and to points in southwestern territory, which are subject to the Deming, N. Mex., rates as maxima, and which would be reduced 10 percent under our interim order, are to be computed as follows: (1) where the Deming rates are held as maxima by means of a tariff rule, the rule may continue to apply to the class rates reduced 10 percent; and (2) where the rates are published specifically in amounts per 100 pounds, subject to the Deming rates as maxima, the class rates shall be recomputed on the zone-III basis, the rates thus arrived at reduced 10 percent, and further reduced to the Deming rates as maxima.

3. Class rates to and from points on short or weak lines, when required to be reduced 10 percent, and when the minimum scale is applicable under our interim order, are to be determined by the addition of existing arbitraries, reduced 10 percent, to the rate to and from the junction point, in the method more particularly described in this report.

4. Subnormal class rates named in rail respondents' tariffs designated Agent Marsh's I. C. C. Nos. 3627, 3628, and 3631, and Agent Kipp's I. C. C. Nos. A-2392, A-3121, A-3309, A-3402, A-3418, A-3537, and A-3582, and subnormal class rates between Manistique-Cherry Valley, Mich., and Chicago, Ill., and Milwaukee, Wis., are excepted from our findings in Part III of the original report, subject to respondents' stipulation that in no instance will the subnormal class rates in western trunkline and southwestern territories exceed the corresponding normal class rates prescribed by us, reduced 10 percent.

Exhibit 12.

5. Class rates between extended zone C in Wisconsin and official territory are to be treated as within official territory, except rates between Illinois territory and extended zone C.

6. Class rates between Owensboro, Ky., and stations on the Louisville and Nashville Railroad in official territory, including Cincinnati, Ohio, and Evansville, Ind., governed by official classification, are excepted from our findings in Part III of the original report and from our interim order.

7. Reduced class rates are not required to be applied over generally unused routes in instances where there are over other routes going commodity, column, or exception rates, between the same points.

AMENDMENT OF ULTIMATE FINDINGS, PART II

Finding 1, part II, page 700 of the report, is amended by adding thereto a paragraph reading as follows:

That the intraterritorial class rates (except as apply to rail-and-water coastal service or relate to short- or weak-line arbitraries) applicable within official and Illinois territories are less than just and reasonable rates, and are, and for the future will be, unjust and unreasonable in violation of section 1(4) and (5)(a) of the act.

An appropriate order will be entered.

PORTER, *Commissioner*, concurring in part:

I agree with the modifications of or additions to the prior findings here made with respect to the *ad interim* class-rate revisions except where and to the extent they are intended to support a required increase in any of the class rates in official territory, including the rates from

points on the Chesapeake and Ohio in Kentucky. As stated in my separate expression which accompanied the prior report, in my opinion the record is wholly inadequate to support any findings that the class rates within official territory are unreasonable under section 1 of the act. Also, I am unable to concur in what is said in the instant report in support of the prior findings of undue prejudice and preference under section 3, which to my mind are grounded upon unwarranted assumptions rather than upon any factual evidence before us. Accordingly, I would grant the petitions for reconsideration of the foregoing findings under sections 1 and 3.

BARNARD, *Commissioner*, dissenting:

I am unable to give my approval to the supplemental report herein. It is my view as heretofore expressed in my dissent from the majority action upon the original report that rates which have been prescribed by orders of this Commission cannot be condemned as being unreasonable and therefore in violation of section 1 of the Interstate Commerce Act or otherwise unlawful because in violation of some other section of the act, unless and until competent testimony has been given establishing that such rates are either unreasonable or otherwise unlawful. No such showing was made on the record in this case and therefore, as I said in that dissent, findings made by the Commission and the conclusions based thereon were unlawful. I cannot give even a qualified approval to this supplemental report without thereby giving such recognition to the original report as in my opinion it is not entitled to have. Such action would be inconsistent with and contradictory of the views expressed in my original dissent.

COMMISSIONER PATTERSON, necessarily absent, did not participate in the consideration and disposition of this supplemental report.

Exhibit 13.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 30th day of October, A. D. 1945.

No. 28300

CLASS RATE INVESTIGATION, 1939

It appearing, That on May 15, 1945, the Commission made and filed a report in this proceeding containing its findings of fact and conclusions thereon, and on the same date entered an order therein which was amended by order entered July 25, 1945;

It further appearing, That various petitions have been filed seeking reconsideration and modification of the said report and order;

And it further appearing, That the Commission has considered the matters and things involved in the said petitions, insofar as they request modifications of the findings, and of the said order, as amended, and has made and filed its supplemental report herein containing its findings of fact and conclusions thereon, which report and the report of May 15, 1945, are hereby referred to and made a part hereof:

It is ordered, That the said order of May 15, 1945, as amended, be, and it is hereby, further amended by adding to the second ordering paragraph additional provisos reading as follows:

> *Provided further*, That the requirement herein that certain class rates be reduced shall not apply to class rates: (1) on coastwise or intercoastal traffic moving to and from the north Atlantic ports (including

the Virginia ports); or (2) on coastwise or intercoastal traffic moving through south Atlantic and Gulf ports where such rates are specifically published to apply on coastwise or intercoastal traffic.

Provided further, That (1) where class rates from and to points in the Southwest are made subject to the Deming, N. Mex., rates as maxima by means of a tariff rule, such rule may continue to apply to the class rates reduced 10 percent; and (2) where class rates from and to points in the Southwest are published specifically in amounts per 100 pounds, subject to the Deming, N. Mex., rates as maxima, the class rates should be recomputed on the zone-III basis, the rates thus arrived at reduced 10 percent, and further reduced to the Deming rates as maxima.

Provided further, That, with respect to class rates to or from points on short or weak lines, the addition of existing arbitraries, reduced by 10 percent, is authorized, as more particularly set forth in the aforesaid supplemental report made and filed on the date hereof.

Provided further, That the requirement herein that certain class rates be reduced shall not apply to the subnormal interstate class rates named in respondents' tariffs designated Agent Marsh's I. C. C. Nos. 3627, 3628, and 3631 and Agent Kipp's I. C. C. Nos. A-2592, A-3121, A-3309, A-3402, A-3418, A-3437, and A-3582, and subnormal class rates between Manistique-Cherry Valley, Mich., and Chicago, Ill., and Milwaukee, Wis., which subnormal rates were established and are maintained for the purpose of meeting motor carrier or other competition and are more particularly described in the supplemental report herein, subject to respondents' stipulation that in no instance

will the subnormal class rates in western trunk-line and southwestern territories exceed the corresponding normal class rates prescribed by this Commission, as modified by the reductions herein prescribed.

Provided further, That the requirement herein that certain class rates be reduced shall not apply to the class rates governed by the official classification between Owensboro, Ky., on the one hand, and stations on lines of the Louisville and Nashville Railroad Company in official territory, including Cincinnati, Ohio, and Evansville, Ind., on the other hand, which rates were established and are maintained in accordance with relief from section 4 of the Interstate Commerce Act for the purpose of meeting motor carrier competition.

And provided further, That the reduced class rates are not required to be applied over generally unused routes in instances where there are over other routes going commodity, column, or exception rates between the same points.

It is further ordered, That the said order of May 15, 1945, be, and it is hereby, further amended by adding to the third ordering paragraph two provisos reading as follows:

Provided, That the requirement herein that certain class rates be increased shall not apply to class rates on coastwise or intercoastal traffic moving to and from the north Atlantic ports (including the Virginia ports).

And provided further, That in the matter of class rates between points in extended zone C in Wisconsin, and points in official territory, extended zone C in Wisconsin shall be considered to be, and shall be

treated as, part of official territory, except as to rates between Illinois territory and extended zone C in Wisconsin.

It is further ordered, That the order of May 15, 1945, as amended by our order of July 25, 1945, be, and it is hereby, further amended by changing the two new paragraphs, added after the fifth ordering paragraph by said order of July 25, 1945, to read as follows:

It is further ordered, That all outstanding unexpired orders, as amended, of the Commission, authorizing or prescribing class rates for the transportation in interstate commerce of property moving at the classification ratings within, and from and to, official territory (including Illinois territory), southern territory, southwestern territory, and western trunk-line territory, as described in the report herein, be, and they are hereby, modified, effective concurrently with the establishment of the rates herein required to be applied, to the extent necessary to permit the reduced rates, or increased rates, herein required, to be applied, and to the extent necessary to allow respondents to make corresponding changes in their rail-water and rail-water-rail class rates.

It is further ordered, That all tariffs or supplements changing rates by authority of this order, which are maintained or held by authority of outstanding orders of the Commission, shall bear on their title page specific reference to this order, as amended.

It is further ordered, That in all other respects the petitions insofar as they request reconsideration, reargument, further hearing, modification of the findings and

Exhibit 13.

order, or postponement of the effective date, with respect to the ad interim revision be, and they are hereby, denied.

And it is further ordered, That this order shall continue in force until the further order of the Commission. By the Commission.

W. P. BARTEL,
Secretary.

(SEAL)

[fol. 486] IN UNITED STATES DISTRICT COURT

Civil No. 2311

[Title omitted]

ORDER—Filed December 5, 1945

There having been presented to the undersigned on November 29, 1945, the verified petition of the plaintiffs wherein they apply for an interlocutory and final injunction suspending and restraining the enforcement of certain orders of the Interstate Commerce Commission, relating to the charges to be made for the transportation of freight or merchandise by carrier, and setting aside same, which orders are set forth in said petition; and praying further that a special court of three judges be constituted to hear this cause as required by law;

The undersigned does hereby call to his assistance to hear and determine the application, and to act in all matters pertaining to this cause as provided by law, Honorable Harrie B. Chase, a Judge of the United States Circuit Court of Appeals for the Second Circuit, and Honorable John C. Knox, a Judge of the United States District Court for the Southern District of New York, who, together with the undersigned, shall constitute herein a Special Court, as prayed for in said petition, and as required by law.

Stephen W. Brennan, Judge of United States District Court for the Northern District of New York.

Dated at Utica, New York, December 3, 1945.

[fol. 487] IN UNITED STATES DISTRICT COURT

Civil No. 2311

[Title omitted]

ORDER TO SHOW CAUSE—Filed December 6, 1945

Whereas the above entitled action is pending in this Court and a verified petition has been filed with the Clerk of this Court praying for a temporary stay and interlocutory injunction and a final decree enjoining, setting aside, an-

nulling, and suspending two reports and orders of the Interstate Commerce Commission dated, respectively, May 15, 1945 and October 30, 1945, as amended, in a proceeding entitled "Class Rate Investigation 1939", Docket Nos. 28300 and 28310 on the docket of the Commission; and

Whereas it is made to appear from said verified petition that plaintiffs may be entitled to the temporary stay, the interlocutory injunction and the final decree therein prayed for;

It Is Ordered that defendant, The United States of America, appear before the undersigned, and Honorable Harrie B. Chase, a Judge of the United States Circuit Court of Appeals for the Second Circuit, and Honorable John C. Knox, a Judge of the United States District Court for the Southern District of New York, called to assist in hearing and determining said petition in accordance with the provisions of an Act of Congress of October 22, 1913, 38 Stat. 220, Title 28 United States Code, Section 47, at the United [fol. 488] States Court House in Room 110, in the City of New York, New York, on the 13th day of December, 1945, at two o'clock in the afternoon of that day, or as soon thereafter as counsel can be heard, and then and there show cause before said Court and Judges so convoked or so called together why the aforesaid application for a temporary stay and for an interlocutory injunction should not issue;

And it Is Further Ordered, that a copy of this Order be served forthwith upon the Attorney General of the United States and upon the Interstate Commerce Commission by registered mail or by personal delivery, and upon the United States Attorney for the Northern District of New York, at Syracuse, New York, not less than five days before the date herein set for said hearing;

And it Is Further Ordered, that defendant file its answer to said petition with the Clerk of this Court, and mail copies thereof to plaintiffs' attorneys within thirty days from the date of service of a copy of said petition upon the Attorney General of the United States.

Dated, December 5th, 1945.

Stephen W. Brennan, United States District Judge.

[fol. 489] IN UNITED STATES DISTRICT COURT

Civil No. 2311

[Title omitted]

ORDER GRANTING LEAVE TO INTERVENE—November 29, 1945.

On application duly made and the Court being fully advised in the premises,

It is ordered that leave be and the same is hereby granted to Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; The Colorado and Southern Railway Company; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Chicago, Saint Paul, Minneapolis and Omaha Railway Company; The Denver and Rio Grande Western Railroad Company; The Duluth, South Shore and [fol. 490] Atlantic Railway Company; Great Northern Railway Company; The Kansas City Southern Railway Company; Midland Valley Railroad Company; The Minneapolis & St. Louis Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Beaver, Meade and Englewood Railroad Company; Guy. A. Thompson, Trustee, Missouri Pacific Railroad Company, Debtor; St. Louis Southwestern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; The Chicago, Rock Island and Pacific Railway Company, and Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company, Combined; Union Pacific Railroad Company; Minnneapolis, St. Paul & Sault Ste. Marie Railroad Company; Missouri and Arkansas Railway Company; Green Bay and Western Railroad Company; Northern Pacific Railway Company; The Texas and Pacific Railway Company; Chicago Great Western Railway Company; Southern Pacific Company; Elgin, Joliet & Eastern Railway Company; Fort Dodge, Des Moines & Southern Rail- [fol. 491] way Company to file their intervening petition herein and that they be made parties plaintiffs to this cause.

——, ——, Utica, N. Y.

Entered:

Stephen W. Brennan, U. S. Dist. Judge.

[fol. 492] IN THE UNITED STATES DISTRICT COURT

Civil No. 2311

[Title omitted]

AMENDED PETITION FOR LEAVE TO INTERVENE—Filed January 24, 1946.

[fol. 493] To the Honorable the Judges of the District Court of the United States for the Northern District of New York:

Now come Chicago and North Western Railway Company; Chicago, Burlington & Quincy Railroad Company; The Colorado and Southern Railway Company; Fort Worth and Denver City Railway Company; The Wichita Valley Railway Company; Chicago, Saint Paul, Minneapolis and Omaha Railway Company; The Denver and Rio Grande Western Railway Company; The Duluth, South Shore and Atlantic Railway Company; Great Northern Railway Company; The Kansas City Southern Railway Company; Midland Valley Railroad Company; The Minneapolis & St. Louis Railway Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Beaver, Meade and Englewood Railroad Company; Guy A. Thompson, Trustee, Missouri Pacific Railroad [fol. 494] Company, Debtor; St. Louis Southwestern Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Gulf, Colorado and Santa Fe Railway Company; Panhandle and Santa Fe Railway Company; Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees of the Property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company; The Chicago, Rock Island and Pacific Railway Company, and Joseph B. Fleming and Aaron Colnon, Trustees of The Chicago, Rock Island and Pacific Railway Company; Union Pacific Railroad Company; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company; Missouri and Arkansas Railway Company; Green Bay and Western Railroad Company; Northern Pacific Railway Company; The Texas and Pacific Railway Company; Chicago Great Western Railway Company; Southern Pacific Company; Elgin, Joliet & Eastern Railway Company; Fort Dodge, Des Moines & Southern Railway Company; and Texas and New Orleans Railroad Company,

and represent that they have an interest in the matters involved in this proceeding, and desire to intervene and become parties plaintiffs.

In support of their Petition they show:

1. Petitioner, Chicago and North Western Railway Company is a railroad corporation organized and existing under the laws of the State of Wisconsin; Chicago, Burlington and Quincy Railroad Company is a railroad corporation organized and existing under the laws of the State of Illinois; The Colorado and Southern Railway Company is a railroad corporation organized and existing under the laws of the State of Colorado; Forth Worth and Denver City Railway Company is a railroad corporation organized and existing under the laws of the State of Texas; The Wichita [fol. 495] Valley Railway Company is a railroad corporation organized and existing under the laws of the State of Texas; Chicago, Saint Paul, Minneapolis and Omaha Railway Company is a railroad corporation organized and existing under the laws of the State of Wisconsin; The Denver and Rio Grande Western Railroad Company is a railroad corporation organized and existing under the laws of the State of Delaware; The Duluth, South Shore and Atlantic Railway Company is a railroad corporation organized and existing under the laws of the States of Michigan and Wisconsin; Great Northern Railway Company is a railroad corporation organized and existing under the laws of the State of Minnesota; The Kansas City Southern Railway Company [redacted] railroad corporation organized and existing under the [redacted]s of the State of Missouri; Midland Valley Railroad Company is a railroad corporation organized and existing under the laws of the State of Arkansas; The Minneapolis & St. Louis Railway Company is a railroad corporation organized and existing under the laws of the State of Minnesota; Missouri-Kansas-Texas Railroad Company is a railroad corporation organized and existing under the laws of the State of Missouri; Missouri-Kansas-Texas Railroad Company of Texas is a railroad corporation organized and existing under the laws of the State of Texas; Beaver, Meade and Englewood Railroad Company is a railroad corporation organized and existing under the laws of the State of Oklahoma; Missouri Pacific Railroad Company, Debtor, Guy A. Thompson Trustee, is a railroad corporation organized and existing under the laws of the State of Missouri;

St. Louis Southwestern Railway Company is a railroad corporation organized and existing under the laws of the [fol. 496] State of Missouri; The Atchison, Topeka and Santa Fe Railway Company is a railroad corporation organized and existing under the laws of the State of Kansas; Gulf, Colorado and Santa Fe Railway Company is a railroad corporation organized and existing under the laws of the State of Texas; Panhandle and Santa Fe Railway Company is a railroad corporation organized and existing under the laws of the State of Texas; Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Henry A. Scandrett, Walter J. Cummings and George I. Haight, Trustees, is a railroad corporation organized and existing under the laws of the State of Wisconsin; The Chicago, Rock Island and Pacific Railway Company, Joseph B. Fleming and Aaron Colnon, Trustees, is a railroad corporation organized and existing under the laws of the States of Illinois and Iowa; Union Pacific Railroad Company is a railroad corporation organized and existing under the laws of the State of Utah; Minneapolis, St. Paul & Sault Ste. Marie Railroad Company is a railroad corporation organized and existing under the laws of the State of Minnesota; Missouri and Arkansas Railway Company is a railroad corporation organized and existing under the laws of the State of Arkansas; Green Bay and Western Railroad Company is a railroad corporation organized and existing under the laws of the State of Wisconsin; Northern Pacific Railway Company is a railroad corporation organized and existing under the laws of the State of Wisconsin; The Texas and Pacific Railway Company is an organization existing by special act of the Federal Congress; Chicago Great Western Railway Company is a railroad corporation organized and existing under the laws of the State of Illinois; Southern Pacific Company [fol. 497] is a railroad corporation organized and existing under the laws of the State of Kentucky; Elgin, Joliet & Eastern Railway Company is a railroad corporation organized and existing under the laws of the States of Illinois and Indiana; Fort Dodge, Des Moines & Southern Railway Company is a railroad corporation organized and existing under the laws of the State of Iowa; Texas and New Orleans Railroad Company is a corporation organized and existing under the laws of the State of Texas.

2. Petitioners own and operate railroads in the eastern portion of so-called Western Territory, said eastern portion

being that territory generally on and west of the west bank of Lake Michigan to the Illinois-Indiana State Line, thence south to the Wabash River, thence south to the Ohio River, thence southwest to the confluence of the Ohio and Mississippi river, at Cairo, Illinois, thence the Mississippi River, south, to the Gulf of Mexico and on and east of the following line: The western boundaries of the States of North Dakota, South Dakota and Nebraska, south to the main line of the Union Pacific Railroad Company; thence along that railway west to Cheyenne, Wyoming, thence south to the line of The Colorado and Southern Railway Company and paralleling railroads passing through Denver, Pueblo, and Trinidad, Colorado, to the border of the State of New Mexico, thence successively east, south and west along the latter border to the Rio Grande (excluding any point in New Mexico), thence along the Rio Grande to the Gulf of Mexico. The Eastern portion of Western Territory is hereinafter referred to in this Petition as "Western Territory." Western [fol. 498] Territory contains within it Western Trunk-Line Territory and Southwestern Territory. Petitioners are common carriers by railroad of passengers and property for hire and are subject to regulation under the Interstate Commerce Act, as amended.

3. The States of New York, Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Wisconsin, and the Commonwealth of Pennsylvania, hereinafter referred to as plaintiffs, have heretofore filed their petition in this Court in which they pray for a restraining order and a final decree enjoining and restraining the enforcement of the orders of the Interstate Commerce Commission entered in the proceeding before said Commission, known as Docket No. 28300, Class Rate Investigation, 1939, decided May 15, 1945, as modified by its first supplemental report and order dated October 30, 1945.

4. Your petitioners further represent that they were respondents to the proceeding before the Interstate Commerce Commission, Docket No. 28300, Class Rate Investigation, 1939, and that representatives of petitioners appeared and introduced evidence at the hearings before the Interstate Commerce Commission in said proceeding.

5. Under authority of the Judicial Code, Sections 212, 213, as set forth in Title 28, Paragraph 45a of U.S.C.A.,

your petitioners being parties at interest in the proceeding before the Interstate Commerce Commission, in which the reports and orders under attack herein were made and entered by the said Interstate Commerce Commission; are permitted to intervene as a matter of right and be represented by counsel in this proceeding brought by plaintiffs [fol. 499] before this Court which involves the validity of such reports and orders.

6. Your petitioners represent that they have an interest in the controversy decided by the Interstate Commerce Commission and that they have an interest in the suit brought by plaintiffs to enjoin and annul the reports and orders of the Interstate Commerce Commission entered in said proceeding in that the reports and orders of the Interstate Commerce Commission, by reducing class rates in the Western Territory 10 per cent below those presently in effect, will cause your petitioners irreparable damage by reason of a loss in revenues of from $5,000,000 to $10,000,000 per year and for other reasons as hereinafter stated.

7. Under authority of Rule 10 (c) of the Rules of Civil Procedure for the District Courts of the United States your petitioners adopt, by reference, the following portions of the petition filed by plaintiffs in this cause to the same effect as if such portions were incorporated herein in their entirety:

Subdivision VI, Page 3.

Subdivision VII, Pages 3 and 4, except the next to the last sentence.

Subdivision VIII, Pages 4 to 5.

Subdivision IX, Page 5.

Subdivision X, Pages 5 and 6.

8. The Commission found that the interstate class rates under investigation by the Commission in Docket No. 28300, Class Rate Investigation, 1939, were, generally speaking, those prescribed by the Commission itself in general class. [fol. 500] rate revision proceedings after extended investigation.

9. Your petitioners adopt, by reference, the following portions of the petition filed by plaintiffs in this cause to the same effect as if such portions were incorporated herein in their entirety:

Subdivision XII, page 6, the second sentence only.
Subdivision XIV, pages 8 and 9, except the last sentence.
Subdivision XV, pages 9 to 11, the first and last sentences only.
Subdivision XVI, page 11.
Subdivision XIX, pages 19 to 22.
Subdivision XX, pages 22 and 23, except the last sentence.

10. The scale of uniform class rates prescribed by the Commission to become effective simultaneously with the effective date of uniform classification would compel a reduction in the class rates charged by your petitioners between points within Western Territory and between points in Western Territory on the one hand and Official Territory (including, wherever referred to in this petition, Illinois Territory) and Southern Territory on the other hand. By its order of May 15, 1945, the Commission ordered, as an *ad interim* adjustment stated to be for the purpose of accomplishing a greater approach to uniformity, that the railroads publish and file tariff schedules to become effective not later than August 30, 1945, reducing by ten per cent the intraterritorial class rates for transportation within [fol. 501] Western Trunk Line, Southwestern and Southern Territories and reducing by ten per cent the interterritorial class rates for transportation in Western Trunk Line, Southwestern, Southern and Official Territories (subject to a prescribed minimum scale of rates in instances where the ten per cent reduction would be below the prescribed scale), and increasing by ten per cent the class rates for intraterritorial transportation within Official Territory.

11. Thereafter, in July, 1945, and within the period allowed therefor by the Commission's Rules of Procedure, petitions for reopening and reconsideration were filed with the Commission on behalf of your petitioners, of plaintiffs, of various groups of shippers and of others.

12. Your petitioners adopt, by reference, subdivision XXIII, page 27 of the petition filed by plaintiffs, to the same effect as if such subdivision were incorporated herein in its entirety.

13. On or about November 1, 1945, the Commission issued its supplemental report, dated October 30, 1945, and its order pursuant thereto of the same date, copies of which, marked Exhibits 12 and 13, respectively, are attached to

the petition of plaintiffs and are adopted by reference by your petitioners. The Commission, in this supplemental report, found that certain changes should be made in its original report and order but it denied the petitions for reopening and reconsideration filed on behalf of your petitioners and others. Except for certain adjustments with respect to particular rates, the Commission affirmed its previous decision and order.

[fol. 502] 14. Under the compulsion of the Commission's orders and to avoid risk of penalties for violation thereof, your petitioners, unless the Commission's orders are annul-ed or set aside or their enforcement is stayed, will be required to file tariff schedules, to become effective on January 1, 1946, reducing by ten percent their intraterritorial class rates for the transportation of freight between points in Western Trunk Line Territory, their intraterritorial class rates for the transportation of freight between points in Southwestern Territory and their interterritorial class rates for the transportation of freight between points in Western Trunk Line Territory, Southwestern Territory, Southern Territory, and Official Territory. Similarly, the railroads in Southern Territory will be required to reduce by ten percent their intraterritorial class rates between points in Southern Territory and their interterritorial class rates between points in the territories named above. Also, the railroads in Official Territory will be required to increase by ten percent their intraterritorial class rates between points in Official Territory and to reduce by ten percent their interterritorial class rates between Official Territory and the other Territories named above. The ten percent reductions described above are subject to prescribed minimum rates where the rates at present exceed the prescribed minimum rates, but no increase is permitted where the present rates are below the prescribed minimum rates.

15. Your petitioners adopt, by reference, the following portions of the petition of plaintiffs to the same effect as if such portions were incorporated herein in their entirety:

[fol. 503] Subdivision XXVII—pages 30 to 32, except the portion thereof which refers to the ultimate finding by the Commission that the intraterritorial class rates applicable within Official Territory are, and

for the future will be, unjust and unreasonable, in violation of Section 1 (4) and (5) (a) of the Act.

Subdivision XXVIII—Only that portion of subdivision XXVIII which is contained on page 32 and on page 33 down to the end of the first paragraph on page 33.

16. The Commission erred and acted arbitrarily, capriciously, unlawfully and contrary to and without support in the necessary preliminary findings or in the evidence in making the finding at page 705 of its report (Exhibit 5 of petition of plaintiffs) that the revenue needs of the carriers in Official Territory with respect to their class-rate traffic are greater than is the case as to the class-rate traffic of the carriers in the Western Trunk Line Territory and the Southwestern Territory.

17. Your petitioners adopt, by reference, the following portions of the petition of plaintiffs, to the same effect as if such portions were incorporated herein in their entirety:

Subdivision XXIX—pages 35 to 38, except the last paragraph on page 37 and page 38.

Subdivision XXX—page 38.

Subdivision XXXI—pages 38 to 50, except the matter contained in the following portions thereof:

(a) Item (f) of paragraph (2) on pages 39 and 40;

(b) Paragraph 4 on pages 42 and 43;

[fol. 504] (c) Items (a) and (c) of paragraph (5) on page 43;

(d) Paragraph 6 and 7 on pages 44 to 49.

(e) Paragraph 10 on page 50.

Subdivision XXXII—pages 50 and 51.

18. Insofar as the orders are based upon a finding of undue and unreasonable preference and advantage or undue and unreasonable prejudice and disadvantage in violation of Section 3 of the Interstate Commerce Act, the orders are invalid and beyond the Commission's authority in failing to leave to the railroad respondents, as required by law, the alternative of correcting such violation, if it were lawfully found to exist, entirely by increasing the intraterritorial class rates in Official Territory, which the Commission found to be unjust and unreasonably low.

19. There is no evidence in the record as to the costs of transporting carload class-rate traffic. There is no evidence in the record sufficient to support a finding that the costs of transporting freight in Western Territory are not substantially higher than the costs of transporting freight in Official Territory. On the contrary, the evidence shows that the costs of transporting freight in Western Territory exceed the costs of transporting freight in Official Territory by a percentage greater than the percentage by which the Western Territory class rates exceed the Official Territory class rates.

20. There is no evidence sufficient to support a finding that the difference in the levels of the class rates in the several territories and interterritorially has prevented or [fol. 505] limited the industrial and economic growth of the Western Territory and the evidence and preliminary findings of the Commission are to the contrary.

21. There is no evidence that any factory or business establishment has failed to move from Official Territory to Western Territory or has failed to become established in Western Territory because of any difference in level between the intraterritorial class rates in Official Territory and the interterritorial class rates between Official Territory and Western Territory. There is no evidence that any manufacturer or business establishment in Western Territory has failed to sell an article in Official Territory because of that difference in level or has been prejudiced or harmed in any way by that difference in levels.

22. The cost studies upon which the Commission relied show that the *ad interim* class rates prescribed by the Commission for Western Territory are so low that they will fail to provide the cost and a reasonable return to your petitioners for transporting traffic moving on such class rates. It is thus shown that enforcement of the Commission's orders requiring the reduction of the intraterritorial class rates in Western Trunk-Line Territory and Southwestern Territory and interterritorial class rates between points within these territories and between points in these territories and points in Official Territory and Southern Territory to the *ad interim* basis prescribed by the Commission would result in taking from your petitioners their property without just compensation and without due process of law

in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 506] 23. It appears upon the face of the original report and the supplemental report that the Commission therein misinterpreted and misconstrued the Interstate Commerce Act and Section 5 (b) of the Transportation Act of 1940, commonly known and herein referred to as the Ramspeck Resolution. The Transportation Act of 1940 amended Section 3 (1) of the Interstate Commerce Act by adding the words "region, district, territory" to read as follows:

> "Sec. 3. (1) It shall be unlawful for any common carrier subject to the provisions of this part to make, give, or cause any undue or unreasonable preference or advantage to any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic, in any respect whatsoever; or to subject any particular person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory, or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever: *Provided, however,* That this paragraph shall not be construed to apply to discrimination, prejudice, or disadvantage to the traffic of any other carrier of whatever description." (49 U. S. C. A. Supp. Sec. 3.)

The Ramspeck Resolution did not amend or purport to amend the Interstate Commerce Act. It reads as follows:

> "(b) The Interstate Commerce Commission is authorized and directed to institute an investigation into the rates on manufactured products, agricultural commodities, and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to Part I of the Interstate Commerce Act, as amended, for the purpose of determining whether said rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each

other, and to enter such orders as may be appropriate for the removal of any unlawfulness which may be found to exist: *Provided*, That the Commission in its discretion may confine its investigation to such manufactured products, agricultural commodities, and raw [fol. 507] materials, and the rates thereon as shippers thereof may specifically request be included in such investigation." (reported in footnote to 49 U. S. C. A. Supp. Sec. 3).

The Ramspeck Resolution is in substantially the same terms as part of the joint resolution adopted by the Congress in 1925, generally known as the Hoch-Smith Resolution (43 Stat. L. 801) which reads in part as follows:

"That the Interstate Commerce Commission is authorized and directed to make a thorough investigation of the rate structure of common carriers subject to the interstate commerce act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist."

The Commission misconstrued the Ramspeck Resolution as constituting an amendment to the Interstate Commerce Act. It further misconstrued the Ramspeck Resolution and the amendments to the Interstate Commerce Act as constituting a mandate to the Commission to change the recognized elements of rate-making to hold unlawful rates which were lawful at the time of the initiation of this proceeding in 1939 and to replace the rates which the Commission had previously prescribed pursuant to the recognized elements of rate-making with rates which will be on a parity, mile for mile, in the various rate-making territories.

The misinterpretation placed upon the Ramspeck Resolution by the Commission is similar to the misinterpretation originally placed by the Commission on the Hoch-Smith [fol. 508] Resolution in a proceeding entitled *California*

Growers' and Shippers' Protective League v. S. P. Co., 129 I. C. C. 25, 132 I. C. C. 582 (1927). In a suit brought by the carriers to set aside the order therein, the Supreme Court unanimously set aside the order of the Commission on the ground that in making it the Commission had misinterpreted the Hoch-Smith Resolution and the Interstate Commerce Act. *Ann Arbor R. Co. v. United States*, 281 U. S. 658 (1930).

The Court stated, at page 666, that:

> ". . . The question presented is whether the resolution changes the substantive provisions of existing laws relating to transportation rates, and particularly whether rates which would be lawful under those laws are made unlawful by it."

With respect to that part of the Hoch-Smith Resolution after which the Ramspeck Resolution is patterned, the Court, at page 667, said that the resolution was devoted to requiring the Commission to proceed along stated lines for the purpose of procuring prompt observance of existing laws, such as Sections 1(5) and 3(1) of the Interstate Commerce Act, requiring that all rates be just and reasonable and prohibiting all undue preferences and unjust discriminations, whether relating to shippers, commodities, classes of traffic or localities. The Court held that the Commission had erred in interpreting the Resolution as changing the substantive provisions of the Interstate Commerce Act.

There are lacking in the reports of the Commission in Docket No. 28300, Class Rate Investigation, 1939, the basic or essential findings required to support the orders under the Interstate Commerce Act, and none of the facts recited [fol. 509] by the Commission are sufficient to form a basis for any finding that the existing class rates in the Western Territory are unreasonable or otherwise unlawful under the Interstate Commerce Act as properly interpreted. In conducting the investigation and making its orders, the Commission applied, not the standards of rate-making of the Interstate Commerce Act, but standards which the Commission erroneously believed to have been substituted by the Ramspeck Resolution. The Commission misinterpreted and misconstrued the Ramspeck Resolution, the Interstate Commerce Act, and the amendment to Section 3

thereof, contained in the Transportation Act of 1940. By reason of these premises, the orders of the Commission are void and beyond the authority of the Commission to make.

24. The Commission found, on page 585 of its original report, that the carriers in Western Territory incurred a deficit of $34,348,277 in handling less-than-carload traffic in 1939. On page 697 of its original report the Commission made the following finding:

> ". . . Such an analysis unmistakably reveals the fact that less-than-carload traffic generally in all the territories is not bearing its proper share of the costs of transportation—in fact, excluding war-time loading, it is not yielding, on the average, its out-of-pocket costs plus constant expenses solely related to this traffic, plus the cost of collection and delivery, in any territory except possibly in the southern where the margin of difference between revenues and these expenses is slight."

Pursuant to such findings the Commission ordered a ten per cent increase in the class rates on such traffic in Official Territory as an *ad interim* measure and ordered a fifteen per cent increase in such rates in Official Territory as a [fol. 510] permanent measure, notwithstanding such findings and such corrective orders with respect to the rates in Official Territory, the Commission ordered a 10% reduction in the class rates applicable to less-than-carload traffic in Western Territory carried by your petitioners. Its action constitutes an abuse of administrative discretion and renders the orders void, and is in violation of the Fifth Amendment to the Constitution of the United States as a taking of private property without due process of law.

25. There is no evidence in the record sufficient to support the finding that the Western Trunk Line and Southwestern Territories as a whole and the shippers and receivers of freight located therein are subjected to undue and unreasonable prejudice and disadvantage by the relation between (a) the interterritorial class rates applicable from those territories to Official Territory and (b) the intraterritorial class rates applicable within Official Territory. If the business of shippers and receivers of freight in Western Trunk Line and Southwestern Terri-

tories had been discouraged by the differences in those freight rates, they would have appeared before the Com- [fol. 511] mission to voice their complaints in this comprehensive investigation. The Commission's report, on the contrary, shows that not a single shipper, receiver or commercial establishment in the Western Trunk Line and Southwestern Territories made such a claim. The Commission stated, at page 673 of its original report:

> "Only three commercial witnesses, speaking for individual establishments in the Southwest and Western Trunk Line territory, testified in this proceeding. These were a steel company at Denver, a manufacturer of coal-washing machinery at Pittsburg, Kans., and a lamp and stove company at Wichita. The representatives of the two manufacturers last named testified that a great preponderance of their products was shipped to Official Territory, but neither complained that the rate adjustment had discouraged or barred their enterprises from locating where they are. The steel company at Denver uses class rates only to a very limited degree."

The "steel company at Denver" referred to by the Commission did not urge a parity between Western Trunk Line and Southwestern Territory class rates on the one hand and Official Territory rates on the other. On the contrary, it urged that the rate level from the Missouri [fol. 512] River to the Rocky Mountains be established at thirty per cent higher than the rate level in Official Territory.

Even the representatives of public officials of the states in the Western Trunk Line and Southwestern Territories were not agreed that a uniformity of class rates should be sought or that there should be made a claim of undue and unreasonable prejudice and disadvantage. Most of Wisconsin is in Western Trunk Line Territory from the standpoint of interstate class rates, yet Wisconsin not only opposed any such claim but is one of the plaintiffs in this proceeding seeking to set aside the Commission's orders. Michigan is partly in Western Trunk Line Territory but is one of the plaintiffs in this proceeding seeking to set aside the Commission's orders. Missouri appeared and offered evidence but disavowed

any claim that the existing class rates are unlawful. Colorado expressed the view that class-rate uniformity on the eastern scale would reduce the revenues of western railroads too drastically. Wyoming did not object to the present rates. The Commission stated that Nebraska asks for a rate structure that will enable it to reach markets on an equality with competitors but that Nebraska speaks of freight rates in a generic sense "and not specifically of the class rates in issue." (Original report, page 653). Topeka, Kansas, argued that higher class rates are justified in Western Trunk Line Territory than in Official Territory because of territorial differences in the consist of traffic, in commodity rates and in carrier needs. [fol. 513] Kansas City preferred to retain its present class rates if reductions in them would entail increases on its heavy-loading commodities. The Commission stated that even among the states whose public representatives claim they are retarded by the class rate structure, and seek greater industrial development, "some concede that rates on the eastern scale alone would not accomplish that objective." (Original report, page 651).

The class rates within Mountain-Pacific Territory and between that Territory and other territories were not directly in issue in this proceeding before the Commission. Nevertheless, as the Commission states in its report, the establishment of the uniform classification found reasonable by the Commission will necessarily make changes in the measure of class rates within, to and from Mountain-Pacific Territory. For this reason the Railroad Commission of the State of California, the Arizona Corporation Commission and the Public Service Commission of the State of Nevada were represented at the oral argument. These states contended that uniformity is unnecessary and impracticable and that this is not the time to bring about a general adjustment of the rate structure because of the abnormalities of the war period and because of the fact that the record, even at the time of oral argument, was already old.

26. The Commission erred as a matter of law and acted arbitrarily and capriciously in entering its order dated October 30, 1945, denying the petition of your petitioners for postponement of the effective date of order, for reopening, reargument and reconsideration.

[fol. 514] 27. Your petitioners are without adequate remedy at law.

Wherefore, your petitioners pray that they may be permitted to intervene in this cause as parties plaintiffs, in accordance with the provisions of Title 28 U. S. C. A. Section 45a.

Your petitioners further pray that a preliminary injunction or restraining order may be entered by this Court restraining the enforcement of said reports and orders of the Interstate Commerce Commission in Docket No. 28300, Class Rate Investigation, 1939, and that upon final hearing and submission herein the Court adjudge that the reports and orders of the Interstate Commerce Commission, Exhibits 5, 6, 12 and 13 of the petition of plaintiffs, are unlawful, beyond the power of the Commission, arbitrary, capricious, unsupported by essential findings, and contrary to and without support in the evidence, and that a decree be entered declaring said reports and orders to be null, void and of no effect, and perpetually enjoining enforcement, operation and execution of said reports and orders and that petitioners may have such other and further [fol. 515] relief in the premises as the nature of the case shall require and to this Court shall seem meet.

Respectfully submitted, H. C. Barron, B. F. Batts, James G. Blaine, H. E. Boe, P. F. Gault, J. A. Gillen, R. G. Hagman, Toll R. Ware, G. H. Muckley, Conrad Olson, Dana T. Smith, Carson L. Taylor, Robert Thompson, Douglas F. Smith, D. Robert Thomas, Jr., Solicitors for Petitioners.

Sidley, Austin, Burgess & Harper, 11 So. LaSalle Street, Chicago, Illinois; Ferris, Burgess, Hughes & Dorrance, First National Bank Building, Utica, New York.
Of Counsel.

[fol. 516] In United States District Court

Civil No. 2311

[Title omitted]

Petition for Leave to Intervene—Filed December 10, 1945

Come now the states of Kansas, Oklahoma, Louisiana, Arkansas, Texas, Nebraska, North Dakota, and South Dakota, and the Corporation Commission of the State of

Oklahoma, the Arkansas Corporation Commission, the Corporation Commission of the State of Kansas, the Kansas Industrial Development Commission, the Railroad Commission of Texas, the Nebraska State Railway Commission, the Public Service Commission of the State of North Dakota, and the Public Utilities Commission of the State of South Dakota, and respectfully petition the Court for permission to intervene herein and have the right to appear and be made parties to this case and to be represented before the Court by counsel and as grounds therefor respectfully state:

1. That these petitioners are sovereign states and duly constituted statutory bodies of such sovereign states and were parties in interest to the proceeding before the Interstate Commerce Commission wherein the orders complained of in the petition herein were entered and are [fol. 517] parties in whose favor the said orders were entered by the Interstate Commerce Commission.

2. That irreparable injury will result to these parties and to the citizens and shippers in these various states if the orders of the Interstate Commerce Commission herein sought to be enjoined and set aside are so enjoined and so set aside.

3. That by the decision of the Interstate Commerce Commission in the proceeding wherein said orders were entered the said Interstate Commerce Commission found that the class rates and charges being assessed and collected from the shippers within these states are unreasonable and unjustly discriminatory in violation of the Interstate Commerce Act and the orders issued by said Interstate Commerce Commission were issued for the purpose of relieving the said shippers within these various states of the burden of paying unreasonable and unjustly discriminatory class rates.

4. That by reason of the foregoing facts these petitioners are proper parties to be permitted to intervene herein and are parties in interest in this proceeding.

Wherefore, before named petitioners respectfully pray the Court for an order permitting them to intervene herein in support of the orders of the Interstate Commerce Com-

mission and in support of the defendant herein and to be treated as parties hereto.

Respectfully prayed, The State of Oklahoma, by Robert S. Kerr, Governor, Oklahoma City, Oklahoma; The Corporation Commission, State of Oklahoma, by C. B. Bee, Special Attorney, Okla-
[fol. 518] homa City, Oklahoma; The State of Louisiana, and Arkansas Corporation Commission, by J. C. Murray, Special Attorney, Little Rock, Arkansas; The State of Arkansas, by Ben Laney, Governor, Little Rock, Arkansas; The State of Kansas Corporation Commission of the State of Kansas and The Kansas Industrial Development Commission, by Byron M. Gray, Special Attorney, Topeka, Kansas; State of Texas, and Railroad Commission of Texas, by Grover Sellers, Attorney General, Austin, Texas; State of Nebraska, and Nebraska State Railway Commission, by Walter R. Johnson, Attorney General and H. Emmerson Kokjer, Deputy Attorney General, Lincoln, Nebraska; State of North Dakota, and Public Service Commission of The State of North Dakota, by Nels G. Johnson, Attorney General, Bismarck, North Dakota and Neal E. Williams, Special Asst. Atty. General, Fargo, North Dakota; State of South Dakota, and Public Utilities Commission of The State of South Dakota, by Wm. Williamson, Attorney, Pierre, South Dakota.

[fol. 519] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed December 10, 1945

The undersigned hereby acknowledges service this date of a copy of the Court's order, signed by Judge Stephen W. Brennan, dated December 3, 1945, whereby Judge Brennan calls to his assistance to constitute the special court, as prayed for in plaintiffs' petition, as required by law, Honorable Harrie B. Chase, Judge of the United States Circuit Court of Appeals for the Second Circuit, and

Honorable John C. Knox, Judge of the United States District Court for the Southern District of New York.

Service is also acknowledged on this date of a copy of the order to show cause in the above proceeding, dated December 5, 1945, giving notice of hearing on plaintiffs' petition for an interlocutory injunction, to be held before the Court constituted as above stated at the United States Court House, in Room 110, in the City of New York, on the 13th day of December, 1945, at 2:00 o'clock in the afternoon, and requiring defendant at said time to show cause why the interlocutory injunction prayed for should not issue.

Daniel W. Knowlton, for Interstate Commerce Commission.

Dated: December 7, 1945.

[fol. 520] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

MOTION TO INTERVENE AS PARTIES DEFENDANTS—Filed December 12, 1945

To the Honorable Judges of the Aforesaid Court:

Now come the States of Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, and the Southern Governors Conference, a voluntary organization of the Governors of said states, and move for leave to intervene as defendants in this action and tender herewith their application of intervention, setting forth the reason and grounds for such intervention.

J. V. Norman, Attorney for Applicants, 1512 Kentucky Home Life Bldg., Louisville 2, Kentucky.

[fol. 521] CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing motion and the application of intervention attached thereto was this day mailed by me to each of the following:

Edward Dumbald, Esq., Special Assistant to the Attorney General, Department of Justice, Washington, D. C.

Daniel W. Knowlton, Chief Counsel, Interstate Commerce Commission, Washington, D. C.

Nathaniel L. Goldstein, Attorney General, Albany, N. Y.

Parker Mc Collester, Special Assistant Attorney General, 25 Broadway, New York 4, N. Y.

Clair John Killoran, Attorney General, Wilmington, Delaware.

James A. Emmert, Attorney General, Indianapolis, Ind.

William Curran, Attorney General, Baltimore, Md.

John R. Dethmers, Attorney General, Lansing, Mich.

Walter D. Van Riper, Attorney General, Trenton, N. J.

Hugh S. Jenkins, Attorney General, Columbus, Ohio.

John Martin, Attorney General, Madison, Wisconsin.

James H. Duff, Attorney General, Harrisburg, Penn.

This the 10th day of December, 1945.

J. V. Norman, Attorney for Applicants, 1512 Kentucky Home Life Bldg., Louisville 2, Kentucky.

[fol. 522] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

APPLICATION OF INTERVENTION ON BEHALF OF THE STATES OF ALABAMA, FLORIDA, GEORGIA, LOUISIANA, MISSISSIPPI, NORTH CAROLINA, SOUTH CAROLINA, AND TENNESSEE AND OF THE SOUTHERN GOVERNORS CONFERENCE

Now come the States of Alabama, Florida, Georgia, Louisana, Mississippi, North Carolina, South Carolina, and Tennessee and the Southern Governors Conference, a voluntary organization of the Governors of said States, and present this their application for intervention, and respectfully show:

1. That they were parties in interest and interested in the proceeding before the Interstate Commerce Commission

involved in this controversy, and that their interest is adverse to the interest of the plaintiffs herein, and under authority of section 212 and section 213 of the Judicial Code, 38 Stat. 220 (28 U.S.C.A. 45a) desire to intervene in and become parties defendants to this proceeding and to file pleadings herein:

2. Applicants represent citizens and communities, and also themselves, as shippers and receivers of freight transported by railroads upon rates involved in the proceeding [fol. 523] sought to be enjoined.

3. By order dated July 29, 1939, as amended by order dated August 1, 1940, the Interstate Commerce Commission, on its own motion, instituted a proceeding of investigation and inquiry into and concerning the railroad classification of freight in all parts of the United States, and concerning the class rates of all common carriers by railroad subject to the Interstate Commerce Act, except in Mountain-Pacific territory, known as Docket No. 28310—*Consolidated Freight Classification*, and Docket No. 28300—*Class Rate Investigation, 1939*. Applicants intervened in and became parties to the proceeding.

4. As a result of the investigation and inquiry, the Commission, by its report and order of May 15, 1945, as amended, attached to plaintiffs' petition, entitled Docket No. 28300—*Class Rate Investigation, 1939*, and Docket No. 28310—*Consolidated Freight Classification*, 262 I.C.C. 447, ordered the respondent railroads to reduce the present class rates 10 per cent subject to a minimum scale prescribed by the Commission in and between southern, western trunk line, and southwestern territories and between those territories on the one hand and official territory on the other hand, and to increase the present class rates 10 per cent in official territory by January 1, 1946, as a temporary measure, and for an interim period, until a uniform classification of freight can be established for application with a scale of class rates authorized for uniform application in all parts of the United States, except Mountain-Pacific territory. The Commission concluded that the respondent railroads should be given a reasonable opportunity to initiate a lawful uniform classification and the respondent railroads have, within the time specified by the Commission, advised the Commission that they will submit for the Commission's approval a uniform freight classification for the

entire country. No orders were issued either as to the uniform classification or the permanent scale of rates. The Commission has therefore retained jurisdiction of the proceedings to make such further orders as may be proper.

[fol. 524] 5. Tariffs have been filed with the Interstate Commerce Commission, effective January 1, 1946, reducing the class rates by 10 per cent subject to a minimum scale prescribed by the Commission in and between southern, western trunk line, and southwestern territories and between those territories on the one hand and official territory on the other hand, and increasing the class rates within official territory 10 per cent. Neither the railroads in official territory or those in southern territory filed any petition for rehearing or reconsideration before the Interstate Commerce Commission and the filing of said tariffs constitutes a voluntary compliance by said railroads with the order of the Commission.

6. Applicants represent that the order of the Interstate Commerce Commission entered May 15, 1945, as amended, in the proceeding described as Docket No. 28300—*Class Rate Investigation, 1939*, against which plaintiffs bring this suit, is valid and legal and not in derogation of any legal rights of the plaintiffs in the above-entitled cause.

Wherefore, Applicants pray that leave be granted to them to intervene in and be treated as parties defendants in the above-entitled cause, and to file any further pleadings herein and to have such other and further relief in the premises as equity may require and as to your Honors may seem appropriate.

J. V. Norman, Counsel for Applicants, 1512 Kentucky Home Life Bldg., Louisville 2, Kentucky.

[fol. 525] In the District Court of the United States

Civil Action No. 2311

[Title omitted]

Intervention of Interstate Commerce Commission—Filed December 12, 1945

To the Honorable the Judges of Said Court:

In accordance with the provisions of section 212 of the Judicial Code, 36 Stat. L. 1150 (U.S. Code, Tit. 28,

:sec. 45a), providing, in part, "that the Interstate Commerce Commission and any party or parties in interest to the proceeding before the Commission, in which an order or requirement is made, may appear as parties thereto of their own motion and as of right, and be represented by their counsel, in any suit wherein is involved the validity of such order or requirement," I hereby enter the appearance of the Interstate Commerce Commission as a party defendant, and of myself as its counsel, in the above-entitled suit.

Daniel W. Knowlton, Chief Counsel.

[fol. 526] In the District Court of the United States

Civil No. 2311

[Title omitted]

Petition for Leave to Intervene—Filed December 13, 1945

By: Horace A. Hildreth, Governor of the State of Maine; Charles M. Dale, Governor of the State of New Hampshire; Mortimer R. Proctor, Governor of the State of Vermont; Maurice J. Tobin, Governor of The Commonwealth of Massachusetts; John O. Pastore, Governor of the State of Rhode Island; Raymond E. Baldwin, Governor of the State of Connecticut.

[fol. 527] To the Honorable the Judges of the District Court of the United States for the Northern District of New York:

Now come your petitioners, Horace A. Hildreth, Governor of the State of Maine, Charles M. Dale, Governor of the State of New Hampshire, Mortimer R. Proctor, Governor of the State of Vermont, Maurice J. Tobin, Governor of The Commonwealth of Massachusetts, John O. Pastore, Governor of the State of Rhode Island, and Raymond E. Baldwin, Governor of the State of Connecticut and respectfully represent that they, and each of them, have an interest in the matters involved in the above-entitled proceeding, and desire to intervene and become parties plaintiff thereto, and, in support of this petition say:

1. Each of your petitioners is a Governor of one of the New England States and was permitted to intervene in, and was a party to, proceedings before the Interstate Commerce Commission (hereinafter called the Commission) entitled respectively—Class Rate Investigation, 1939—and—Consolidated Freight Classification—numbered respectively Nos. 28300 and 28310 in the docket of the Com-
[fol. 528] mission, and representatives of your petitioners have appeared at various hearings before the Commission in said proceedings.

2. On or about May 15, 1945, a report was made and order entered in the proceedings before the Commission hereinbefore in paragraph 1 hereof referred to. A copy of said report and order is attached to the petition herein of the States of New York, Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Wisconsin and The Commonwealth of Pennsylvania, hereinafter in paragraph 5 hereof referred to, and is marked Exhibit 5 to said petition. By said order the Commission, among other things, directed that the railroads, parties respondent in said proceedings, increase by ten (10) per cent the class rates for transportation within Official Territory (being roughly that portion of the territorial United States north of the Ohio and Potomac Rivers and east of a line along the western shore of Lake Michigan extending diagonally to the western bank of the Mississippi River opposite Illinois) including the New England States.

3. On or about July 13, 1945, and within the time permitted by law and the rules and regulations of the Commission, your petitioners filed with the Commission a petition for reargument and reconsideration of its report and order hereinbefore in paragraph 2 hereof referred to. A copy of said petition is attached hereto, made part hereof and marked "A".

4. On or about July 25, 1945, by order, a copy of which is attached as Exhibit 10 to the petition herein of the States hereinbefore in paragraph 2 hereof named, the Commission modified its order of May 15, 1945 in certain respects and required that the respondent railroads should establish and make effective the changed rates prescribed thereby on November 30, 1945 upon not less than thirty
[fol. 529] days' notice, instead of upon August 30, 1945.

Thereafter by further order, entered on or about October 26, 1945, a copy of which is attached as Exhibit 11 to said petition, the Commission further amended its order of May 15, 1945 to require that the changed rates prescribed therein be made effective on January 1, 1946 upon not less than thirty days' notice. On or about November 1, 1945, the Commission issued its supplemental report, dated October 30, 1945, and its order pursuant thereto of the same date, copies of which, marked Exhibits 12 and 13, are attached to said petition. The Commission in said supplemental report found that certain changes should be made in its original report and order, but it denied the petitions for reconsideration filed on behalf of your petitioners and others, refused to grant reconsideration or further hearing for the receipt of evidence as to conditions at the present time, and affirmed its previous decision and order that the class rates within Official Territory, including New England, should be increased 10 per cent.

5. On or about November 29, 1945, the States of New York, Delaware, Indiana, Maryland, Michigan, New Jersey, Ohio, Wisconsin and The Commonwealth of Pennsylvania filed herein their Petition seeking an order of this Court enjoining, setting aside and forever annulling the report and order of said Commission, dated May 15, 1945, as amended, and the supplemental report and order dated October 30, 1945, all hereinbefore referred to.

6. Pursuant to the authority contained in Rule 10 (c) of the Rules of Civil Procedure for the District Courts of the United States, your petitioners adopt by reference the following specific pleadings of the Petition hereinbefore in paragraph 5 hereof referred to as fully and completely as if such pleadings were incorporated herein in their entirety, to wit: the pleadings contained in subdivisions [fol. 530] VI to XXXV, both inclusive, of said petition.

7. The reports and orders of the Commission, hereinbefore in paragraph 5 hereof referred to, are arbitrary and unlawful for the reasons set forth in the petition for reargument and reconsideration attached hereto, made part hereof and marked "A" (exclusive of the reason set forth in Point I, B, 1 of said petition), to which petition reference is respectfully made.

8. By virtue of the provisions of Sections 212 and 213 of the Judicial Code of the United States of America (28 U. S. C. 45(a)), your petitioners, being parties in interest *is* said proceedings before said Commission, are entitled to intervene in and be parties to the above-entitled proceedings and to be represented therein by counsel.

9. If said orders of the Commission are invalid and unlawful, as herein alleged, and if they are not stayed pending final determination of this action and are not then annulled and their enforcement permanently enjoined, and if, under the compulsion of said orders, the railroads in Official Territory, including the railroads engaged in transportation within the jurisdiction of this Court, are permitted or required to or do increase their class rates for interstate transportation, the citizens and communities on whose behalf your petitioners, in their representative capacities, bring this action, will be discriminated against and will suffer great and irreparable injury in that, among other things, (1) the cost of doing business in each of the six New England States will be increased, (2) the increased cost of manufacturing and distributing goods in Official Territory will tend to restrict the free flow of such goods, to reduce employment, and substantially impair or destroy property values in each of the six New England States, (3) shippers in each of the six New England States will be re-
[fol. 531] quired to pay increased class rates for the transportation of manufactured articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West, while at the same time they will be required to continue to pay substantially higher transportation charges for the transportation of their raw materials and other low-grade freight than the transportation charges paid by their competitors in other territories, and (4) shippers and receivers of freight in each of the six New England States will be required to pay higher freight charges than heretofore demanded by the railroads in such States or than justified by their transportation costs or other pertinent considerations in order that the class rates for transportation in the South and West may not be reduced more than 10 per cent, all of which will subject your petitioners, their citizens and communities, to damage running into many millions of dol-

lars, for which they will have no means of relief or recoupment.

10. Your petitioners are without adequate remedy at law.

Wherefore your petitioners pray

(1) That they may be permitted to intervene in the above-entitled proceeding as parties plaintiff thereto;

(2) That the Court issue a temporary stay or suspension of the operation of said orders of the Commission;

(3) That the Court, by interlocutory injunction, enjoin and restrain the enforcement of said orders of the Commission pending final hearing and determination of this suit;

(4) That, upon final hearing, the Court adjudge that said reports and orders of the Commission are unlawful, beyond the power of the Commission, arbitrary, capricious, unsupported by essential findings, and contrary to and without support of the evidence;

[fol. 532] (5) That the Court by order annul, set aside and forever enjoin enforcement thereof; and

(6) That your petitioners may have such other and further relief as in the premises may be proper.

Respectfully submitted, Henry E. Foley, 10 Post Office Square, Boston 9, Massachusetts, Counsel for Horace A. Hildreth, Governor of the State of Maine; Charles M. Dale, Governor of the State of New Hampshire; Mortimer R. Proctor, Governor of the State of Vermont; Maurice J. Tobin, Governor of The Commonwealth of Massachusetts; John O. Pastore, Governor of the State of Rhode Island; Raymond E. Baldwin, Governor of the State of Connecticut.

Certificate of Service

I hereby certify that I have this day served copies of the foregoing petition to intervene upon all parties in this proceeding by causing a copy thereof to be mailed properly addressed and prepaid to each of the parties, or if represented by an attorney, to the attorney, at their respective addresses.

Dated at Boston, Massachusetts, this 12th day of December, 1945.

Henry E. Foley, 10 Post Office Square, Boston 9, Massachusetts.

[fols. 533-537] "A"

[fol. 538] BEFORE THE INTERSTATE COMMERCE COMMISSION

Class Rate Investigation, 1939. Docket No. 28300

Consolidated Freight Classification. Docket No. 28310

Petition for Reargument and Reconsideration on Behalf of Horace A. Hildreth, Governor of the State of Maine; Charles M. Dale, Governor of the State of New Hampshire; Mortimer R. Proctor, Governor of the State of Vermont; Maurice J. Tobin, Governor of The Commonwealth of Massachusetts; J. Howard McGrath, Governor of the State of Rhode Island; Raymond E. Baldwin, Governor of the State of Connecticut, and New England Traffic League, New England Shoe and Leather Association, New England Paper & Pulp Traffic Association, Grinding Wheel Manufacturers Association, Associated Industries of Maine, Associated Industries of Vermont, New Hampshire Manufacturers' Association, Associated Industries of Massachusetts, Associated Industries of Rhode Island, Inc., The Manufacturers Association of Connecticut

PETITION

Now come Horace A. Hildreth, Governor of the State of Maine, Charles M. Dale, Governor of the State of New Hampshire, Mortimer R. Proctor, Governor of the State [fol. 539] of Vermont, Maurice J. Tobin, Governor of The Commonwealth of Massachusetts, J. Howard McGrath, Governor of the State of Rhode Island, Raymond E. Baldwin, Governor of the State of Connecticut, and New England Traffic League, New England Shoe and Leather Association, New England Paper & Pulp Traffic Association, Grinding Wheel Manufacturers Association, Associated Industries of Maine, Associated Industries of Vermont, New Hampshire Manufacturers' Association, Associated Industries of Massachusetts, Associated Industries of Rhode Island, Inc., and

The Manufacturers Association of Connecticut and petition this Commission for reargument and reconsideration in respect of the above-entitled proceedings, and in support of their said petition show:

Statement

In and by its decision, dated May 15, 1945, the Commission has, with respect to the existing intraterritorial class rates within Official Territory,* made the following ultimate findings and entered the following order, among others:

(1) A finding that said Official Territory rates are and for the future will be, unjust and unreasonable, in violation of Sections 1(4) and 1(5)(a) of the Act. (Ultimate Finding 1, Part II, Sheet (270)

(2) A finding that the relation between said Official Territory rates and the interterritorial rates applicable from southern, southwestern, and western trunk-line territories into Official Territory results in undue preference and advantage to Official Territory as a whole and to shippers and receivers of freight therein, and subjects southern, southwestern and western territories as a whole and shippers and receivers of freight [fol. 540] therein to undue prejudice and disadvantage, in violation of Section 3(1) of the Act. (Ultimate Finding 3, Part II, Sheet 270)

(3) A finding that said Official Territory rates should be increased 10 per cent "as maximum scales" and that as so increased those scales will be just and reasonable "as maxima". (Part III, Sheet 275)

(4) An order authorizing and directing the carriers to increase said Official Territory rates by ten per cent, and to maintain the rates so increased as the reasonable rates to be hereafter observed until further order of the Commission. (Order, Paragraph 6)

The Commission has further found that intraterritorial class rates applicable within Southern, Southwestern and

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* Unless otherwise indicated, the term—Official Territory—, as herein used, means Official Territory including Illinois territory.

Western trunk-line Territories and interterritorial class rates between all territories east of the Rocky Mountains are unjust and unreasonable; has found just and reasonable a scale of maximum first classe rates, set forth in Appendix 10 to its reports, (which rates are approximately *15% higher* than those now prevailing within Official Territory); has found existing classifications, as a whole, violative of Sections 1 and 3 of the Act and has found that uniformity in classification is required. The Appendix 10 scale is intended for application to the new uniform classification which the respondents are given an opportunity to initiate.

The Commission has also ordered a 10% decrease in intraterritorial class rates applicable within all territories (other than Official) east of the Rocky Mountains and in interterritorial class rates applicable between Official, Southern, Southwestern and Western trunk-line Territories.

The objective of the Commission's findings and order is to effect uniformity of class rates throughout that portion of the United States east of the Rocky Mountains.

[fol. 541] Your petitioners respectfully submit that the ultimate findings of the Commission are unsupported by its preliminary findings or the evidence and that its order exceeds its authority under the Act.

In this petition, your petitioners will first direct attention to the order of the Commission requiring an increase in rates within Official Territory and the findings related thereto and will then present, in summary form, the reasons why it is believed that the remaining ultimate findings are unsupported by either the subsidiary findings or the evidence.

While there is no warrant in the record for a requirement that uniform class rates be put into effect or for a requirement that a uniform classification be established, any attempt to secure uniformity through increases in Official Territory class rates is grossly unfair to shippers and receivers of freight within Official Territory and wholly without warrant. The Commission has ordered an increase in Official Territory class rates without any finding that those rates are unreasonably low and without any evidence that those rates are non-compensatory. This has been done notwithstanding favorable earnings of the Official Territory carriers and the complete absence of complaint with respect to the Official Territory level of rates. In so doing the Com-

mission has disregarded the mandate of Section 15a (2) of the Act that transportation service be rendered "at the lowest cost consistent with the furnishing of such service."

[fol. 542] Point I

The Record in These Proceedings Not Only Affords No Legal Basis Whatsoever for, But in Fact Precludes, an Order Directing an Increase in the Existing Intraterritorial Class Rates Applicable Within Official Territory.

A. The Order of The Commission Requiring Respondents to Establish and Maintain Intraterritorial Class Rates Within Official Territory at a Level Higher Than Their Present Level Is Unauthorized Unless the Existing Intraterritorial Class Rates Applicable Within Official Territory Are Properly Found to be Less Than Reasonable Minimum Rates in Violation of Section 1 or Unless Such Rates are Properly Found to Result in Unlawful Preference in Violation of Section 3 and no Alternative Method of Removing the Preference is Lawful; Such Order, Moreover, if not so Justified, is Itself in Violation of Section 15a(2) of the Act.

This Commission's authority, under Section 15(1) of the Act, to prescribe an increase in the class rates applicable within Official Territory is dependent, in these proceedings, upon the making of a valid finding, supported by the evidence, that the rates displaced by the Commission's action are unlawful either as unreasonably low in violation of Section 1 of the Act or as unduly preferential in violation of Section 3 of the Act and, in the latter event, an increase may not be ordered unless the respondents have no other lawful alternative than to make such increase.

If an order directing an increase in existing Official Territory class rates is to be predicated upon a finding that such rates are unlawful in violation of Section 1 of the Act, such finding must necessarily be that said rates are not compensatory, but are, on the contrary, so low as to burden [fol. 543] other traffic. This prerequisite to a minimum rate order is clearly set forth by the United States Supreme Court in its decision in *Texas & Pacific Ry. Co.* v. *United States*, 289 U. S. 627 (1933), wherein the Court had under consideration the alleged unlawfulness of higher rates to Galveston than to New Orleans. After pointing out that the Section 1 protest concerning the higher rates to Galveston had been withdrawn, the court said, with respect to the reasonableness of the lower rates to New Orleans,

". . . The evidence failed to show that the rates of the Texas & Pacific and the L. R. & N. on export and import shipments to and from New Orleans were not compensatory. The Commission refused to find that they were so low as to cast a burden on other traffic. There was therefore no basis for an order fixing minimum reasonable rates under § 15 (1) of the Act." (P. 633)

While the Commission's power to condemn proposed, as distinguished from existing rates, is admittedly broader, and permits the Commission to take into account such factors as the probable effect of the proposed rates upon the existing rate adjustment or the possibility that the proposed rates will precipitate destructive "rate wars",—factors not involved in a consideration of existing rates—no uncertainty exists as to the limitations upon the Commission's authority to prescribe increases in established prevailing rates. Minimum rate orders affecting these rates, must, in order to be valid under Section 15 (1), be predicated upon the findings so clearly pointed out in the *Texas & Pacific* decision.

If an order directing an increase in existing Official Territory class rates is to be predicated upon a finding that such rates are unlawfully preferential in violation of Section 3 of the Act, such finding must necessarily be (1) that the relationship between such rates and the allegedly prejudicial [fol. 544] rates in question causes Official Territory shippers to pay lower charges (relative to the service performed) than the prejudiced shippers, to the injury of the latter, and without justification, and (2) that no alternative method of correcting the relationship would be lawful. In the first place, it is obvious that no preference or prejudice, due or undue, can exist if differences in charges (relative to the service afforded) do not result from the existence of the two sets of rates. A class rate superseded by an exception or commodity rate cannot (any more than can any other superseded rate) create preference or prejudice. It is equally clear, from the decisions of this Commission and of the courts, that a mere showing of differences in charges paid by shippers does not establish unlawfulness under Section 3, unless injury is established and unless such differences as exist are not justified by transportation conditions. Thus, this Commission said in *Duluth Chamber of*

Commerce v. Chicago, St. P., M. & O. Ry. Co., 122 I.C.C. 739, 742 (1927), concerning the need for a showing of injury,

> "There is here a clear discrimination in the rates charged for the movement of the same kind of traffic under similar transportation conditions. But to prove that this discrimination results in a violation of Section 3, *it must be shown that complainant suffers injury by reason of the discrimination, and that this injury will cease if the discrimination is removed*, regardless of the manner of its removal." (Italics supplied)

And, as the United States Supreme Court said with respect to justification for differences, in *United States v. Illinois Central Company et al.*, 263 U. S. 515, 524 (1924)

> "To bring a difference in rates within the prohibition of Section 3, it must be shown that the discrimination practiced is unjust when measured by the transportation standard. In other words, the difference in rates [fol. 545] cannot be held illegal, *unless it is shown that it is not justified by the cost of the respective services, by their values, or by other transportation conditions.*" (Italics supplied.)

Secondly, even upon a finding that the relationship between two rates produces unlawful preference and prejudice in violation of Section 3, the Commission is not empowered to subject the preferential rate to a *minimum rate order* unless no lawful alternative for removal of the preference is available. When the violation arises from a relationship in rates, the only appropriate remedy is to order a change in the relationship, leaving the carriers free to correct the relationship, in accordance with their managerial discretion, unless they have no lawful alternative. As the United States Supreme Court expressly said in *Texas & Pacific Ry Co. v. United States* (*supra*), at page 650,

> ". . . Where an order is made under § 3 an alternative must be afforded. The offender or offenders may abate the discrimination by raising one rate, lowering the other, or altering both. Compare *American Express Co. v. Caldwell*, 244 U. S. 617, 624; *United States v. Penna R. Co.*, 266 U. S. 191; *Chicago, I & L. Ry. Co. v. United States*, 270 U. S. 287, 292; *Minneapolis & St. L. R. Co. v. Peoria & Pekin U. R. Co.*, 270 U. S. 580,

582. The situation must be such that the carrier or carriers if given an option have an actual alternative."

If the Commission's minimum rate order in this proceeding requiring a 10 per cent increase in Official Territory class rates cannot be sustained as an appropriate order under either Section 1 or Section 3 (as it clearly cannot), then such order is not only without lawful authority but is itself violative of Section 15a of the Act, which provides that:

> "In the exercise of its power to prescribe just and reasonable rates the Commission shall give due [fol. 546] consideration, among other factors, to the effect of rates on the movement of traffic by the carrier or carriers for which the rates are prescribed; *to the need, in the public interest, of adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service;* and to the need of revenues sufficient to enable the carriers, under *honest, economical, and efficient management to provide* such service." (Italics supplied)

An ordered increase in rates not found to be unduly low is wholly inconsistent with and unresponsive to the clear mandate of Section 15a.

B. The Commission's Decision Does Not Include, and the Record Does Not Warrant, a Finding That the Existing Intraterritorial Class Rates Applicable Within Official Territory Are Less Than Reasonable Minimum Rates in Violation of Section 1 of the Act.

1. The Commission Has Not Found That Any Class Rates Presently Applicable within Official Territory Are Less Than Reasonable Minimum Rates.

The Commission has carefully refrained from finding that the existing intraterritorial class rates within Official Territory (which by its *ad interim* order are increased 10% and which the report implies should ultimately be increased approximately 15%) are below the minimum reasonable level of such rates. In lieu of any such finding the Commission has found merely,

> "1. That the intraterritorial class rates (except as they apply to rail-and-water coastal service or relate to short-or-weak-line arbitraries) applicable within official, Illinois, southern, southwestern, and western

trunk-line territories, are, and for the future will be, unjust and unreasonable, in violation of sections 1 (4) and (5) (a) of the act." (Sheet 270)

[fol. 547] The inference, in fact, from this as well as the succeeding findings in the report is that the Commission apparently does not believe the Official Territory rates to be lower than reasonable minimum rates, but merely lower than reasonable maximum rates, for the Commission, in finding that the existing class rates, increased by 10%, will be just and reasonable, finds that such increased rates will be just and reasonable *maxima*—not minima. The meaning of this latter finding is not clear, but whatever its meaning and explanation, it is clear that the Commission has not made the necessary finding, prerequisite to a minimum rate order correcting unreasonableness, that existing Official Territory class rates are lower than reasonable minimum rates.

2. The Record Herein Would Not Warrant a Finding That Official Territory Class Rates Either for Carload Traffic or for Class Rate Traffic Generally Are Less Than Reasonable Minimum Rates.

(a) *No evidence was offered and no claim was made in the proceedings that intraterritorial class rates within Official Territory for carload Traffic or for class rate traffic generally are unreasonably low.*

At no time during the entire course of the proceedings was any claim asserted or any attempt made to show the non-compensatory character of carload class rates or of class rates generally. No respondent and no shipper so asserted. Not only did the Official Territory lines make no claim that their rates were non-compensatory but, throughout the proceedings, they defended the lawfulness of their existing rate structure, during the hearings (R. 671-5), on brief (See pp. 9 and 58 to 70, brief of Official Territory Lines, dated August 12, 1943) and at oral argument. So also no shipper or shipper's representative [fol. 548] complained of the Official Territory class rate level. If, in fact, Official Territory class rates applicable to intraterritorial movement were unduly low, it is natural to assume that shipper protest at this "favoritism" would be overwhelming, for unduly low class rates in Official

Territory would necessarily mean that the reasonable total revenues which the Official Territory carriers receive (see page —— hereof) are derived from unduly high rates on traffic moving on exception and commodity rates. And yet, no Official Territory shipper using these latter rates appeared at the hearings to urge that class rates within Official Territory be increased. So, also, no southern or western proponents of uniformity criticized Official Territory class rates as being lower than reasonable minimum rates; in fact, many of these proponents recommended the adoption of Official Territory class rates in their own territories.

(b) *Evidence of record with respect to the revenues of the Official Territory carriers, particularly when viewed in the light of the contribution of class rate traffic to total revenues, indicates clearly that Official Territory class rates on carload traffic and on class rate traffic generally are not unreasonably low.*

Revenue and rate data of record negative completely any claim that class rates within Official Territory are unreasonably low. Thus, it is clear of record that the revenues of the Official Territory carriers from all operations have been consistently remunerative. As Witness [fol. 549] Kennedy's Exhibit 18 indicates, the annual rate of return on investment in Official Territory has been as follows:

Year	Rate of Return Official, including Pocahontas lines
1928	5.10%
1929	5.39%
1930	3.63%
1931	2.24%
1932	1.79%
1933	2.33%
1934	2.27%
1935	2.57%
1936	3.19%
1937	2.73%
1938	1.61%
1939	2.73%
Average 1928-1939	2.95%
Average 1930-1939	2.51%

And as data set forth on sheet 185 of the Commission's report indicate, since 1940, the Official Territory rate of return has consistently been higher, averaging 4.28% for the three-year period, 1941 through 1943,* and reaching 4.9% in 1942. Moreover, it must be recognized that class rate traffic, on the whole, consistently accounts for more than its proportionate share of average return. Class rate traffic in Official Territory now moves on rates which this Commission has prescribed as reasonable maximum rates. The 17.6% of the traffic which (according to the traffic study made and submitted in evidence in this proceeding as Exhibit 228) moves on exception rates within Official Territory, and a substantial portion of the 76.7% of the traffic which (according to said study) moves on commodity rates [fol. 550] therein, necessarily moves on rates which are lower than class rates in relation to the cost of the transportation service furnished, for these exceptions, column and commodity rates are all * rates which the railroads have published in lieu of the higher class rates which would otherwise be applicable, usually in order to att act additional, or to retain existing, traffic. While the eason for the reduction is unimportant, the fact remains that commodities which are accorded ratings in the Official Classification and yet which move under exception ratings, or upon column or commodity rates, generally pay a smaller proportion of the fully distributed cost of their carriage (including return on investment) than do articles which move on full class rates. The logic is irrefutable that class rates generally cannot be found to be unreasonably low in Official Territory, if, as is the fact, the Official Territory rate structure, as a whole, affords the Official Territory carriers reasonable return upon their investment, and if, as is the fact, class rate traffic, as a whole, makes a greater than average contribution to revenues above out-of-pocket costs.

2. The Record Herein Would Not Warrant a Finding That Official Territory Class Rates for Less-Than-Carload

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* Data for 1944 is not contained in the record.

* Except only rates published for certain commodities which are not included in the Consolidated Classification; it is generally recognized, however, that these commodities contribute somewhat less proportionately to revenues in excess of out-of-pocket costs, than does class rate traffic.

Traffic or for Any Other Particular Traffic Are Less Than Reasonable Minimum Rates, and Even if Such a Finding Were Warranted and Made, an Order Such as the Commission Has Entered Herein Directing an Increase in All Class Rates Would Not Be Warranted.

No evidence has been offered having any bearing on the cost of moving any particular traffic within Official Terri- [fol. 551] tory except for certain portions of the Edwards Cost Studies which purport to indicate that, upon certain assumptions, less-than-carload rates applicable to third class and lower are inadequate to cover out-of-pocket expenses, plus constant expenses solely related to less-than-carload traffic, plus pickup and delivery costs. It is therefore necessary to consider only the question of whether class rates for less-than-carload traffic are unreasonably low.

(a) *The record does not warrant a finding that any less-than-carload class rates are unreasonably low.*

The record herein warrants no finding that any less-than-carload class rate within Official Territory is unreasonably low, judged by the standards of the Act. Less-than-carload freight is admittedly more costly to handle and transport, due to the additional services performed by the carrier for the shipper and due to the generally lighter loading of cars. The freight is probably somewhat less remunerative to the railroads than is other class rate traffic, due to the probable failure of the spread between carload and less-than-carload rates to cover fully the additional cost of handling. These facts, even if conceded, however, would not establish that less-than-carload traffic in Official Territory is not paying its full transportation cost and more, and the record contains no evidence which would establish unlawfulness. In fact, such additional evidence as is contained in the record establishes, as will hereinafter be pointed out, that existing less-than-carload class rates in Official Territory are compensatory.

The record herein indicates clearly that, in seeking to attract less-than-carload traffic, the rail carriers encounter strong and vigorous competition from motor carriers. [fol. 552] Witnesses for both the rail and motor carriers so testified, and the Commision has so recognized. Moreover, this competition is even more effective in Official Territory than in either the South or West, and data of record concerning the average length of rail haul in each of the three

major rate territories so indicates. Thus, data of record, reproduced on Sheet 141 of the Commission's report, permit the following comparisons of less-than-carload average hauls and carload average hauls in the three major rate territories:

	(1) Carload	(2) Less-than-Carload	Excess (2) over (1)	% Relationship (2) to (1)
Official Territory	273	470	197 mi.	172%
Southern Territory	278	465	187 mi.	167%
Western Trunk-line Territory	342	495	153 mi.	145%

The spread between average less-than-carload and average carload hauls is highly significant and, it is to be observed, this spread is greatest in Official Territory, not only in actual mileage but also percentagewise. The obvious conclusion is that motor carrier competition in respect of less-than-carload traffic is even more effective in Official Territory than in either of the other major rate territories.

That the competition of the motor carriers has been taken into account in the establishment of many less-than-carload class rates is conceded, but the record clearly indicates that, had the Official Territory carriers either failed to recognize and attempt to meet this competition, or had they fixed their rates at any higher levels than the present levels, they could not have attracted any reasonable amount of short haul less-than-carload traffic. As it is, the fact that the average less-than-carload haul is nearly double the average carload haul in Official Territory indicates that a very substantial [fol. 553] proportion of less-than-carload traffic is no longer moving by rail, for no one has contended that less-than-carload freight, in its nature, customarily moves a longer distance than carload freight. Clearly, Official Territory less-than-carload class rates are no lower than the competition requires.

Inasmuch as less-than-carload rates in Official Territory have been established to meet competition, such rates are not unlawful, provided they are compensatory, (see pp. 5 and 6 hereof), and the record does not warrant a finding that any less-than-carload class rate applicable within Official Territory is not compensatory.

No question has been raised concerning the compensatory (and more) nature of first and second class less-than-carload rates.*

The attack upon the compensatory nature of less-than-carload class rates in Official Territory has been centered upon rates of third class and lower. The contention is that such rates do not produce revenues adequate to cover total out-of-pocket and solely related expenses, plus pickup and delivery costs. This contention cannot be sustained, for the record establishes that at the present time, (*which is the period in issue insofar as findings of present unlawfulness are concerned*), all less-than-carload rates in Official Territory are compensatory and more. The Edwards studies, upon which the contention of unreasonableness is based, assume average loads of 6.5 tons per car, whereas the fact is that at the present time average less-than-carload [fol. 554] loadings exceed 10.5 tons, and in the case of certain Official Territory carriers, exceed 11.5 tons. Even Dr. Edwards' figures indicate that with average loads of 10 tons, average less-than-carload costs * are substantially below the third class rate level.** Inasmuch as the record indicates and this Commission recognizes (Sheet 154) that the average less-than-carload shipment moves at between

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* Except only second class less-than-carload rates, for hauls of between 70 and 90 miles. While Dr. Edwards' exhibit purports to show that first class rates are noncompensatory for distances of from 25 to 90 miles, the class rates apply only to second class traffic moving distances of from 70 to 90 miles. A minimum charge of 45c, which is higher than the distance scale rate, is assessed against the balance of this traffic. Inasmuch as the record contains no warrant for any finding or even assumption that less-than-carload traffic moves in Official Traffic by rail at second class rates over distances of from 70 to 90 miles, the record affords no basis for determining that such rates for such distances are unlawful.

* Less-than-carload costs, as hereinafter used, means the costs reflected in Cost Level 6, as set forth in the table on sheet 153 of the Commission's decision.

** Except for hauls of from 75 to 140 miles, where, again, the 45c minimum charge blankets the range, except for distances of from 120 to 140 miles.

65% and 66.2% of first class rates, it is evident that less-than-carload class rates in Official Territory are clearly compensatory, at least under present conditions and at the present time, *which is the period for which the Commission is presuming to prescribe reasonable rates.*

But even if the Commission were warranted in regarding the maintenance of heavy loading of less-than-carload freight as problematical, and in disregarding the testimony of the carriers concerning their development of collection and other extensive traffic generating services designed to insure continued heavy loading of less-than-carload cars, the Commission would still not be warranted in ordering an increase in Official Territory less-than-carload class rates, or any of them, on the basis of the evidence herein. The contention that such rates are non-compensatory is based solely upon the Edwards' cost studies, which, however generally or approximately accurate the Commission may believe them to be, are not represented to be reliable, beyond average cost purposes, to the extent which would permit the Commission to find individual rates or small portions of the rate structure unlawful in relation thereto. The cost studies are not free, and are not claimed to be free, from errors in apportionment and allocation, which (even if Dr. Edwards were right in his contention that they are broadly [fol. 553] compensating) prevent the studies from serving as reliable indices of *cost of particular hauls and services.* These infirmities in the studies were discussed at length at pages 32 to 42 of our original brief herein and need not be reiterated. It is sufficient to repeat that those infirmities cast grave doubts upon the general accuracy of the studies, and render them, beyond any question, *wholly inappropriate as standards for the judgment of the cost of transporting any such limited segment of the traffic as less-than-carload traffic or third and lower class less-than-carload traffic.*

It is further respectfully submitted that the Commission could not have premised its finding of unlawfulness of Official Territory class rates under Section 1 of the Act upon the Edwards cost studies, for if the Commission were satisfied that Dr. Edwards' exhibit accurately reflected the compensatory, or non-compensatory, nature of less-than-carload rates, it could not, in disregard of that showing, have ordered a 10% decrease in all Southern and Western less-than-carload rates. The cost showings are either accurate or they are not. Official Territory and Western trunk

line territory less-than-carload class rates for third and lower classes are both shown to be below cost; Southern less-than-carload class rates are shown to be only slightly above cost. By no conceivable stretch of the imagination could the Edwards cost studies be said to substantiate both a 10% increase in Official Territory rates and a corresponding decrease in both Southern and Western rates. The Commission itself has disregarded the results of the studies insofar as Southern and Western less-than-carload rates are concerned. It should pursue the same course with respect to Official Territory rates.

[fol. 556] (b) *Even if the record warranted a finding (as it does not) that any less-than-carload class rates in Official Territory were unduly low, and if such a finding were made, it would not sustain the Commission's order herein, but would warrant only an order that any such unduly low rate be increased.*

As has hereinbefore been pointed out, no evidence has even been offered in this proceeding which has any tendency to show that Official Territory carload class rates, or class rates generally or Official Territory first and second class less-than-carload class rates, are lower than reasonable minimum rates, and the only rates which have been placed in issue with respect to reasonableness are third and lower class less-than-carload rates. Moreover, these latter rates have been protested, as the Official Territory carriers have pointed out, only by motor carrier interests who seek to have the Commission prescribe higher rail rates in order that they, the motor carriers, may either (a) secure a competitive rate advantage, or (b) increase their own rates without incurring competitive disadvantages.

As has further been pointed out, the evidence of record herein does not warrant a finding that the less-than-carload rates protested by the motor carriers are unreasonably low.

Even if, however, the Commission were to find that third class and lower less-than-carload class rates in Official Territory are unreasonably low, such a finding obviously would not warrant a finding that either (a) all less-than-carload class rates in Official Territory, or (b) all class rates in Official Territory, are unreasonably low. Without such a finding, supported by the evidence, no basis is provided for the entry of the present minimum rate order to

correct unreasonableness. First and second class less-than-carload class rates and all carload class rates in [fol. 557] Official Territory are paying the full cost of their transportation and more, even by Dr. Edwards' showing, and if certain third and fourth class less-than-carload rates were burdening other traffic (and it is clear that they are not, even on Dr. Edwards' showing), such rates would be burdening *all* other traffic, including *all* class rate carload traffic and *all* less-than-carload traffic above third class. This being the case, the only course properly open to the Commission, in the event of a finding that certain less-than-carload rates are unduly depressed, would be to order increases in the specific "unlawful" less-than-carload rates. The burden, if any, to which carload class traffic and higher-rated less-than-carload traffic would be subjected on this assumption cannot be alleviated by *increasing* the rates upon that traffic, and such rates, not themselves burdening other traffic, could not lawfully be increased.

C. The Record Herein Does Not Warrant the Finding that the Existing Intraterritorial Class Rates Applicable within Official Territory Are Unduly Preferential in Violation of Section 3 of the Act.

While this Commission has purported to find that the relationship between the intraterritorial class rates applicable within Official Territory and the existing interterritorial class rates applicable from southern, southwestern and western trunk-line territories into Official Territory gives, causes and produces undue preference and advantage to Official Territory generally and to shippers therein, and subjects the other named regions and shippers therein to undue prejudice and disadvantage, such finding is wholly unsupported by the evidence. The Commission has found, in effect, that the lack of uniformity between intraterritorial class rates applicable within Official Territory on the [fol. 558] one hand and interterritorial class rates applicable from other territories into Official Territory on the other hand, results in undue preference and prejudice, in violation of Section 3 of the Act. To support such a finding there must at least be evidence sufficient to warrant the conclusion (a) that lack of uniformity between class rates within and class rates to Official Territory produces differ-

ences in the relative charges actually paid or required to be paid by intraterritorial and interterritorial shippers respectively; (b) that such differences in charges cause injury to interterritorial shippers and/or to other territories and (c) that such differences in charges are not justified by transportation conditions. Unless it appears that differences in class rates produce differences in charges actually paid or required to be paid, there can be no preference or prejudice. If, for example traffic moving within Official Territory on class rates moves into Official Territory on commodity or exception rates, then class rate differences cannot, of themselves, create preference or prejudice. Class rates into Official Territory under such circumstances have been superseded and only actual not superseded rates can be preferential or prejudicial. Similarly the Commission has long recognized that a finding of a Section 3 violation requires a finding of injury suffered by the entity alleged to prejudiced. Moreover, as hereinbefore pointed out, even if differences in class rates did produce relative differences in charges actually paid or required to be paid, and shippers subjected to relatively higher charges were at a disadvantage, no preference or prejudice can be said to be undue unless the differences are found not justified by differences in transportation conditions. No evidence in the record warrants a conclusion that any of these prerequisites to a Section 3 finding have been established.

[fol. 559] 1. The record fails to establish that the lack of uniformity between class rates within and class rates into Official Territory has resulted in differences in the relative charges actually paid or required to be paid by intraterritorial and interterritorial shippers respectively.

The record fails to warrant a finding that the lack of uniformity of intraterritorial class rates within Official Territory and interterritorial class rates to Official Territory results in preferential treatment of Official Territory shippers because the record provides no basis for a finding that the traffic which moves on class rates *within* Official Territory also moves *into* Official Territory on class rates and pays charges levied in accordance with rate scales which are not uniform. In fact, the record indicates that, in all probability, the same traffic does not so move. This is evident from the fact that relatively little

traffic (less than 6% of the total) moves on intraterritorial class rates within Official Territory, and almost no traffic moves on interterritorial class rates into Official Territory. Less than 1% of the traffic moving into Official Territory from Southern Territory moves on class rates, only 1.5% of that moving into Official Territory from Southwestern Territory, and only 3.1% of that moving from Western Trunk Line Territory. (Sheet 129) There is no basis for inference that any duplication of traffic is involved in these unusually limited volumes. But whether the probability is remote or proximate, the fact remains that the record affords no basis for any finding either that any article moves or that articles generally move both within and into Official Territory on the non-uniform class rates which this Commission has purported to find unlawful in violation of Section 3. Such a finding could not be premised upon any evidence other than a traffic test reflecting the facts [fol. 560] with respect to class rate traffic movement within and into Official Territory, and admittedly no such test was offered in evidence in this proceeding. In the absence of such a traffic test, it cannot be assumed that those articles which move on class rates within Official Territory also move on class rates into Official Territory, particularly in view of the fact that such evidence as was offered with respect to the types of traffic moving on class rates tended clearly to show that particular articles which move on class rates within Official Territory do *not* generally move on class rates into Official Territory. Thus, frequent reference was made to the fact that manufactured articles, which account for a very substantial portion of all class rate traffic in Official Territory, seldom, if ever, move on class rates either within Southern Territory or from Southern Territory to Official Territory (R. 3412, and see our original herein—pages 15 and 16).

This infirmity in the record is clearly fatal, for the *sine qua non* of a finding that the relationship between two class rates results in undue preference and prejudice in violation of Section 3 of the Act is, of course, a finding that the allegedly preferred shipper avails himself of one of said class rates and pays charges which are lower in relation to the service with which he is provided than does the allegedly prejudiced shipper who must avail himself of the other class rate. If either shipper is not required to use the class rate which allegedly prefers or

prejudices him, but may use an exception or commodity rate, it becomes impossible, in the nature of things, to find that preference or prejudice results *from the relationship between the class rates.* The only preference of prejudice which could result would be from the relationship between the actual governing rates, whether class, commodity or exception, and as to this there is no evidence.

[fol. 561] 2. The record fails to establish that the lack of uniformity between class rates within and class rates into Official Territory produces injury.

The record is barren of any evidence of injury to any persons or regions resulting from non-uniformity of class rates within and to Official Territory or even of injury generally consequent upon such lack of uniformity. Absence of such evidence is inevitable not only in view of the fact, (pointed out in the preceding section 1 hereof) that there is a complete absence of evidence that such non-uniformity has caused higher relative charges on any article moving into Official Territory than on articles moving within that territory, but also in view of the fact (pointed out in said section 1) that the record demonstrates that non-uniformity of such class rates cannot generally require the payment of higher rates on the movement into Official Territory. More than ninety-eight (98) per cent of all traffic moving into Official Territory has been found to move on other than class rates, and so could not conceivably be affected injuriously or otherwise, by non-uniformity of class rates. The remaining two (2) percent of all traffic moving into Official Territory, though class-rate traffic, has not been shown either to consist of traffic in the same articles as move on class rates within Official Territory or to move on non-uniform rates.

The testimony of shippers, as summarized in the Commission's report, demonstrates clearly that injury has not been established on the instant record. The testimony therein summarized was as follows:

(a) A washboard manufacturer in Raleigh, North Carolina who ships washboards on less-than-carload class rates into Official Territory, competes with manufacturers in Columbus, Ohio, and Saginaw, Michigan, the latter main-[fol. 562] taining a branch factory at Memphis. His rates are in excess of the Official Territory class rate levels, but

whether his competitors use Official Territory intraterritorial class rates does not appear. Twenty-five (25) per cent of his shipments into the North are to Detroit, a short distance from Saginaw. The Commission noted,

> "The business of the manufacturer who gave this testimony, however, has increased substantially." (Sheet 187)

(b) A tanning plant operator from Andrews, North Carolina, who had recently commenced operations testified concerning interterritorial rates from, *not into,* Official Territory. This is the witness who testified that there are not many hides produced in the south. (Sheet 188).

(c) A shipper of wine at Atlanta complained of rates to Official Ter-itory. The Commission, in commenting upon his testimony pointed out,

> "The witness knew little about rates, and an exhibit prepared by his traffic man was erroneous. The applicable rates to most of the points shown on the exhibit are combination rates, one factor of which, are *exception rates* from Atlanta to border points." (Sheet 188) (Emphasis supplied)

Moreover, this witness' company has recently constructed a larger plant at Atlanta, indicating, as the Commission observes,

> "that the business has made substantial progress at that point." (Sheet 180)

(d) Testimony was also offered on behalf of a macaroni products manufacturer at Memphis who does not ship into Official Territory (but who, if he were to do so, would ship on a Column 50 *exception* rate, under present tariffs).

(e) Southern shipper purported dissatisfaction was expressed by Southern freight bureau managers with [fol. 563] respect to sixteen (16) commodities. Of fourteen (14) commodities referred to by the first witness, only three (3) commodities (calendars, electrical appliances and lead products) would take class rates in moving into Official Territory, and the lead products manufacturer sells all his output in the South and has never sought interterritorial movement. One of the two rate protests made by the second

witness was made on behalf of a "shipper" who had no contracts for and does not produce the commodity taking the "protested" rate. No evidence of injury with respect to the remaining three (3) commodities protested by the two witnesses is included in the record.

The testimony of shipper witnesses, it is submitted, whether considered individually or collectively, cannot be said to evidence the slightest injury resulting from non-uniformity of class rates within and into Official Territory.

Nor is it an answer to say, as certain Southern proponents of uniformity have argued, that existing differences in class rates have discouraged the movement of traffic into Official Territory, and have thus injured the South by drying up the traffic which it would otherwise originate for movement into Official Territory. The record rebuts any such contention. Interterritorial traffic from the South into Official Territory is not only particularly heavy, but it has available to it a broad base of exceptions and commodity rates of wide application. Thus, according to the traffic count made by Dr. Aitchison for May 27 and September 23, 1942, the South moved two-thirds as many cars consigned to Official Territory as it moved cars intra-territorially, and 99.1% of these nearly 16,000 cars moving into Official Territory on the particular days of the survey moved either on exception or commodity rates. Certainly the lack of uniformity of class rates on interterritorial traffic into Official Territory and class rates within Official Territory cannot be found to have served as a deterrent [fol. 564] to southern exporters or potential exporters.

Nor is there any basis of record for any finding that non-uniformity of class rates within and into Official Territory has resulted in injury to industry generally in the other rate territories, in the South in particular, through the retarding of industrial growth and expansion. The record herein establishes beyond question that the growth and development of industry within the South has not been retarded, either by the lack of uniformity of class rates within and into Official Territory, or by any other circumstance. The evidence reviewed by the Commission at sheets 189 to 193 of its report clearly so indicates (and see also pp. 65 to 74 of our original brief herein, dated August 12, 1943).

The failure of the record to warrant any finding of injury resulting from non-uniformity of class rates within and into Official Territory is, of course, fatal to a finding of a Section 3 violation.

3. The Record Fails to Establish That, Even Had the Lack of Uniformity Between Class Rates Within and Class Rates into Official Territory Produced Differences in the Relative Transportation Charges Paid or Required to be Paid, Such Differences Would Not Be Justified by Transportation Conditions.

Even if the record herein had warranted a finding that the lack of uniformity between class rates within and class rates into Official Territory produces differences in the shipping charges paid or required to be paid by intraterritorial and interterritorial shippers, respectively, and results in injury (and, as hereinbefore pointed out, the record does not warrant either such finding), the record would still not sustain the Commission's finding of undue [vol. 565] preference and prejudice, for the record does not warrant the further finding, requisite to a determination of a Section 3 violation, that such differences in charges as result are not justified by transportation conditions. *In fact the Commission's findings both as to territorial cost (Sheets 147 to 151) and consist (Sheet 184) differences clearly precludes a finding that non-uniformity is unduly prejudicial.*

Interterritorial class rates into Official Territory to the extent they have not been superseded by exception or commodity rates, generally* reflect a level somewhat lower than the intraterritorial level within the origin territory, and the greater the proportion of haul in Official Territory the nearer the rate approaches the Official Territory scale. While this method of rate making results at times in the publication of lower relative class rates for shipments moving wholly within Official Territory than for shipments which move into Official Territory from one of the other rate territories, such differences in class rates are justified by transportation conditions affecting the two movements.

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* Except where water competition, principally along the Eastern seaboard, has caused the carriers to publish rates at levels even below the Official Territory level.

The record herein clearly discloses the justification for differences in class rates applicable within and class rates applicable into Official Territory. The record shows and the Commission has found that transportation conditions do differ as between the major rate territories. (Sheet 264) The only finding to the effect that such differences do not justify the present lack of uniformity of class rates is that neither cost differences nor consist differences alone justify the *full* differences in class rates. This finding is obviously inadequate on its face to sustain a finding in favor of uniformity. The evidence indicates, and the Commission has not found otherwise, that differences in territorial class rates (and, therefore, differences between Official Territory [fol. 566] rates and interterritorial rates) are justified by cost and consist differences combined, cost differences justifying the differences between the general rate levels and consist differences justifying the differences in the distribution of the transportation burden which generally result in lower class rates in Official Territory.

(a) *Differences in the cost of service justify differences in the general level of rates as between Official Territory and the other major rate territories.*

The fact that transportation costs are lower in Official Territory than in any of the other major rate territories affords the first important justification for the establishment and maintenance of lower rates generally for Official Territory intraterritorial movement than for interterritorial movement into Official Territory. That transportation costs are lower, and materially lower, in Official Territory than in any of the other major rate territories has repeatedly been recognized by this Commission in the past and is re-affirmed on the record herein, including the Edwards' cost studies. The record shows that Southern Territory costs are more than 6% and Western Trunk-line Territory costs are more than 15%, higher than Official Territory costs. These differences are reflected in the table, appearing on Sheet 147 of the Commission's report, wherein are set forth Dr. Edwards' territorial comparisons of indexes of carload full distributed costs for traffic moving 100, 300 and 500 miles in all classes of equipment, and reflecting actual average loads. The following table reflects

[fol. 567] the cost figures for 300-mile hauls in the three major rate territories:

Territory	*U. S. Costs — 100*	*Official Territory Costs — 100*
Official Territory*	95	100
Southern Territory	101	106.2
Western Territory	110	115.8

These comparisons, of course, reflect average costs of movement for all traffic, not merely class rate traffic, as to which no specific evidence was submitted.

The record establishes, and this Commission has found, moreover, that the general levels of all rates (class, exception, and commodity) within the three major rate territories are closely, and thus properly, related to the cost indices set forth. Thus, the record indicates and the Commission has found that the general revenue levels of the three major rate territories are as follows, the Official Territory level being stated as 100:

Official Territory*	100.
Southern Territory	103.9
Western Territory	115.2

The obvious conclusion is that the general level of Official Territory rates is higher, in relation to costs, than is the general level of rates in either Southern or Western Territory. Differences in the general levels of all rates in the three major rate territories are therefore *more than justified* by cost differences.

The southern and western carriers are entitled to assess higher charges against freight moving within their territories to cover their higher costs; they are justified in assessing such higher charges, proportionately against such traffic as they originate for movement into Official Territory, and the Official Territory carriers are justified [fol. 568] in joining in interterritorial class rates which reflect higher charges for the portion of the haul in Southern or Western Territory, as the case may be.

(b) *Differences in territorial traffic consist justify the differences in class rates within and into Official Territory.*

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* Pocahontas Region included, as it properly should be.

The second and principal justification of record for the maintenance of lower class rates for application wholly within Official Territory than for application to traffic moving into Official Territory is, of course, the fact that a very large actual, as well as relative, volume of highly remunerative* traffic is available to the Official Territory carriers, and is not available to the carriers in the other rate territories. In all territories, much traffic moves of necessity upon rates which are very little more than compensatory. This traffic, while covering its direct costs, makes relatively little contribution to such items as overhead, return on investment, and the like, leaving these burdens entirely to other traffic which can and will move on more remunerative rates. It is elementary, for example, that carriers which can require 40% of their traffic to pay not only its own way but also the bulk of the indirect expense of running the railroad need not charge such high unit rates for the movement of that 40% as carriers, with only 20% of their traffic able to contribute substantially to revenues above the out-of-pocket level, must charge for the movement of that 20%. While the figures used in the foregoing example are used for purposes of illustration only, the record indicates clearly that the basic situation depicted in the illustration does in fact exist and that [fol. 569] Official Territory carriers are not faced with the necessity, as are the southern and western carriers, of obtaining substantial revenues from high rates on a small, actual as well as relative, volume of highly remunerative traffic.

Manufactures and Miscellaneous traffic (which is admittedly the most important class rate traffic) and Products of Mines traffic are admittedly the most highly remunerative types of traffic and, as the record herein indicates, are even more highly remunerative to the Official Territory carriers than to the carriers in Southern Territory, notwithstanding the fact that Official Territory rates are, on the whole, approximately 4% lower than Southern Territory rates and with respect to class rate traffic are even

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*Highly remunerative traffic does not necessarily move on high actual rates. A 25¢ rate on a commodity costing 10¢ to transport is much more remunerative than a 50¢ rate on a commodity costing 45¢ to transport.

lower. In the first place, these two commodity groups provide, throughout the United States as a whole more than 80% of all revenues received by the carriers over and above their out-of-pocket costs even though, in terms of net revenue ton-miles, they constitute only 72.2% of the total carload traffic. (See tables, Sheet 183) Moreover, these two types of traffic are more remunerative to the Official Territory carriers than to the Southern Territory carriers, notwithstanding the fact of higher Southern rates. Thus, as appears from the tables on Sheet 183 of the Commission's decision, these two groups which, combined, account for 82.4% of Official Territory* revenue net ton-miles and only 70.4% of Southern Territory revenue net ton-miles, produce 88.5% of Official Territory, and only 71.4% of Southern Territory, revenues in excess of out-of-pocket costs. The fact is, therefore, that, even under existing rate scales, Manufactures and Miscellaneous and Products of Mines traffic is approximately 6% more highly remunerative to Official Territory carriers than to Southern Territory carriers.

[fol. 570] An additional circumstance which even further increases the rate burden upon class rate traffic in the South, particularly, is the fact that Products of Mines traffic in the South either is not required to contribute or is not capable of contributing so substantially to gross revenues as it contributes in Official Territory. Products of mines traffic which, in Official Territory is highly remunerative, accounting for 38% of all revenues in excess of out-of-pocket costs, is considerably less than highly remunerative in the South, where it accounts for only 21.2% of such revenues. Nor is the difference explainable by differences in net revenue ton-miles, for in Official Territory this traffic represents 49.3% of revenue ton-miles. and in the South it represents 40.8% of revenue net ton-miles. To be as remunerative in the South as in Official Territory, Products of Mines traffic should produce 31.5% of revenues over out-of-pocket costs, instead of the 21.2% which it actually produces. The additional 10.3% of revenues must be assessed, in most part, against class rate traffic.

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* Pocahontas region data not included in Official Territory data in said tables.

The record also establishes, beyond question, that the Official Territory carriers have available to them greater volumes, actually as well as relatively, of this more highly remunerative traffic than do the carriers of any other region. This fact is apparent, not only from the data contained on Sheets 182 and 183 of the Commission's decision, but also from other data of record not referred to in the report. Thus, from the table appearing on Sheet 182 of the decision, the following comparisons with respect to Manu- [fol.571] factures and Miscellaneous and Products of Mines traffic are shown:

	Percentage of total tonnage	*Percentage of total revenues*
Official Territory	88.42%	77.99%
Southern Territory	73.60%	58.31%
Western District	66.02%	53.92%

Other data of record, specifically with respect to Official Territory and Southern Territory, further affirm the much larger actual and relative volumes of highly remunerative traffic in Official Territory:

Comparisons of Volume of Movement of Manufactures and Miscellaneous and Products of Mines Traffic

	Official Territory	*Southern Territory*
Revenue tons per mile, 1939		
Manufactures and Miscellaneous	4,328[1]	1,486
Products of Mines	8,497[1]	2,533
Revenues per mile, 1939		
Manufactures and Miscellaneous	$10,264[1]	$4,079
Products of Mines	8,639[1]	2,784
Percentage: Manufactures and Miscellaneous traffic[2] of all traffic[3]		
Tonnage originated	48.02%[4]	19.97%
Tonnage handled	42.21%[4]	27.58%
Freight revenue	50.82%[4]	34.60%

[1] Pocahontas Region excluded.
[2] Excluding 12 low-grade commodities (Ex. 165).
[3] Excluding coal and coke.
[4] Central Eastern and Great Lakes Regions only.

It is no answer to these data of record to say that interterritorial traffic, having necessarily the same consist in the two territories, tends substantially to reduce territorial differences in consist, for these data of record referred to herein include interterritorial traffic as well as [fol. 572] intraterritorial. If comparisons were to be made, based only upon the consist of the latter traffic, the wide differences already observed would become substantially greater.

Inasmuch as the southern and western carriers are entitled to assess higher charges to their relatively and actually smaller volumes of highly remunerative traffic moving on class rates, they are justified in assessing such charges, proportionately, against such highly remunerative class rate traffic as they originate for carriage into Official Territory, and the Official Territory carriers are justified in joining in interterritorial class rates which reflect the higher charge for the portion of the haul in Southern or Western Territory, as the case may be.

(c) *The fact is irrelevant that differences in transportation conditions exist within territories themselves and that such differences have not prevented territorial uniformity of class rates.*

The fact that substantial intraterritorial uniformity of class rates has been achieved at least within Southern and Official Territories, despite differences in transportation conditions within each territory, has been said to indicate that territorial differences in transportation conditions may not properly be recognized as having any substantial significance in this proceeding.

While it is true that such differences as exist in transportation conditions within each of the major rate territories have not served to prevent substantial territorial uniformity of class rates, this fact is wholly without bearing upon the issue herein. The problems presented with respect to territorial uniformity are essentially different from those presented with respect to uniformity across territorial boundaries. Rate territories exist because the railroads have developed along regional lines on an integrated basis. Ter- [fol. 573] ritorial dividing lines mark broadly the lines beyond which particular carriers do not operate and beyond which, therefore, they cannot economically take account of transportation conditions affecting railroad traffic. Terri-

torial uniformity has been achieved because the conditions which carriers of a given territory experience within their own territory may feasibly be averaged by such carriers. An ordered uniformity crossing territorial boundaries would require carriers to premise rates upon averages of conditions which they do not experience, conditions which, if favorable, would not be reflected in increased revenues, and if unfavorable, would not reduce revenues, and the setting off of losses from one portion of the system against gains from another would be wholly impossible. As Witness Bell testified, the practical considerations which permit territorial uniformity have no appli-ation to nationwide uniformity:

> "Now the situation I have just described is of controlling importance in rate making. In the case of a single railroad, it is possible to offset losses on one portion of the line where freight rates are not there commensurate with the services, by reason of more profitable freight rates on other portions of the system. The money goes into a common treasury from which all expenses are paid. However, no losses incurred by a railroad in one territory can be offset by the profits of another railroad in another territory, because the different railroads or systems are separate and distinct corporate entities * * * The great preponderance of traffic originated in each territory terminates in the same territory. The necessary consequence of this situation is that rates in each territory must be on a basis to meet the requirements of the railroads in that territory. Unless and until the railroads in the United States are operated as a single entity, or at least merged and consolidated [fol. 574] into systems extending throughout the United States, there is a practical necessity for territorial rate making. * * *" (R. 3398-9)

D. The Commission's Decision Does Not Include, and the Record Does Not Warrant, a Finding, Prerequisite to an Order Increasing Official Territory Intraterritorial Rates, That, Even Were the Relationship of Such Intraterritorial and Interterritorial Rates Violative of Section 3, the Respondents Have No Alternative Lawful Method of Removing the Preference.

As has hereinbefore been pointed out, no basis exists for the entry of a minimum rate order, even upon a valid

finding of undue preference and prejudice, in the absence of an additional finding, supported by evidence that the respondents have no lawful alternative method of correcting the relationship. A Section 3 finding is a finding of an unlawful relationship between rates. The only appropriate remedy is to order the correction by the respondents of the relationship, for, under the law, the respondents are the initiators of rates and within the bounds of lawfulness have managerial discretion to fix rates. The only instance where the alternative need not be given them is when no lawful alternative exists. (See page — hereof)

Scrutinized in the light of this fundamental and controlling principal of law, the Commission's order herein must necessarily be found to be without lawful authority, for even if the record warranted (as it clearly does not) the Commission's finding that the relationship between class rates within and into Official Territory results in preference of Official Territory generally and prejudice to Southern and Western Territories generally, the Commission has failed to find, and the record precludes a finding that no lawful alternative method of correcting the [fol. 575] relationship is available to the respondents. The reasonableness of the existing Official Territory class rates has been considered at pp. 9 to 20 hereof, wherein it has been pointed out that there is no claim, and certainly no evidence of record which would warrant a finding that, Official Territory class rates are unreasonably low. The plain fact of the matter is that existing Official Territory class rates are not unreasonably low but are productive of reasonable revenues. As Official Territory class rates are not unreasonably low, an increase therein may not properly be ordered. Even were there a valid Section 3 finding, the respondents must be given a choice within the maximum limits of reasonableness to remedy the relationship found objectionable.

E. The Order of The Commission Directing an Increase in Official Territory Class Rates Is Not Only without Lawful Authority But Is Itself Violative of Section 15a (2) of the Act.

In ordering an increase in Official Territory intraterritorial class rates on the basis of a record which wholly falls to show that such rates, or any of them, are unrea-

sonably low (but which shows, on the contrary, that such rates, together with the carriers' other and generally less remunerative rates, produce reasonable earnings) this Commission has ignored the mandate of Section 15a (2) of the Act which requires that the Commission shall,

> "In the exercise of its power to prescribe just and reasonable rates . . . give due consideration, among other factors, . . . to the need, in the public interest, of adequate and efficient railway transportation service *at the lowest cost consistent with the furnishing of such service.*" (Italics supplied)

[fol. 576] The Commission has ignored the fact of lower costs in Official Territory and the existence therein of far greater actual and relative volumes of high grade, well paying traffic—both of which circumstances justify Official Territory class rates at least as low as at present, and therefore at least 10% lower than the Commission has prescribed. The Commission has further ignored the evidence of record that the existing Official Territory rates have in the past permitted and will in the future permit the Official Territory carriers to provide adequate and efficient railway transportation with reasonable return upon investment.

Guided not by the provisions of Section 15a of the Act and by the evidence of record, viewed in the light of that section, but apparently by a concern lest it not devise and impose a system of rates satisfactory to the proponents of uniformity herein, the Commission has disregarded the stated public policy of the Act, and, in disregard of the public interest in maximum transportation at minimum cost, has increased Official Territory class rates by 10% in order that such uniformity may be achieved. The Act contains no warrant for, and Section 15a of the Act clearly forbids, the Commission's order herein which seeks to require Official Territory shippers to subsidize an enforced uniformity and thus to underwrite an attempt to remake the industrial pattern of the nation.

That the Commission has ordered an increase in intra-territorial class rates within Official Territory solely for the purposes of obtaining rate uniformity and without regard to the public interest in maximum transportation

at minimum cost is evident from the Commission's decision, considered as a whole. In the first place, Official Territory class rates, carload and less-than-carload, have all been adjudged unreasonable and ordered increased [fol. 577] (1) even though no claim, even, of unreasonableness generally has been made with respect to such rates, and (2) even though such rates which must, under the Commission's order be maintained in fact as minimum rates, are 10% higher than the rates which the Commission itself *found to be reasonable maximum rates* only 15 years ago, on a record which indicated that the revenues of the Official Territory carriers were then actually lower than at present. So also, with respect to the finding of Section 3 violation. The minimum rate order which this Commission has entered will require all shippers shipping on class rates within Official Territory to pay rates increased by 10%, and ultimately 15% even though (a) they are not competing in Official Territory markets with Southern or Western producers, or even though (b) their competitors and potential competitors, if any, who are located in the South or West, now ship or may ship into Official Territory on exception or commodity rates as low or lower than the Official Territory class rate level. Only by substituting the standard of uniformity for the Act's standards of lawfulness can the Commission's order herein be deemed justified.

On and after the effective date, if any, of the Commission's order herein requiring the Official Territory carriers to establish and maintain class rates 10% above their present levels, the public interest in "adequate and efficient railway transportation service at the lowest cost consistent with the furnishing of such service . . . ." will have been sacrificed, at the Commission's direction, to the spurious principal of rate uniformity.

[fol. 578] **Point II**

The Record Herein Does Not Warrant the Commission's Order Requiring an Adjustment in All Intraterritorial Class Rates Applicable Within Southern, Southwestern and Western Trunk-Line Territories and in all Interterritorial Class Rates or the Commission's Findings That Existing Classification Ratings Are Unlawful.

The Commission, in addition to requiring an increase in intraterritorial class rates within Official Territory, has

entered an order (a) requiring an adjustment in all intraterritorial class rates within, and in all interterritorial class rates between, each of the other rate territories east of the Rocky Mountains on the ground that such existing rates are unreasonably high in violation of Section 1 of the Act, and (b) requiring an adjustment in all interterritorial rates between said territories and Official Territory on the ground that (1) such existing rates are unreasonably high in violation of Section 1 of the Act* and (2) that such of said existing rates as are applicable to movement to Official Territory are also unduly preferential of Official Territory in violation of Section 3 of the Act.

The Commission has also made findings, although it has entered no order thereon, to the effect (1) that existing freight classifications, as a whole, are unjust and unreasonable in violation of Section 1 of the Act, and unduly preferential and prejudicial in violation of Section 3 (1) of the Act, and (2) that it is impossible, "without a basic unity in classification ratings throughout the country" to maintain a just and reasonable relationship between class rates. The respondent carriers are given until August [fol. 579] 15, 1945, to advise the Commission whether they will undertake to initiate a uniform classification by their own collective action. (Sheet 64)

In connection with the discussion under Point I hereof, it has been pointed out that the record affords no basis for the Section 3 finding with respect to interterritorial class rates applicable to traffic moving into Official Territory. (See pages 20 to 37 hereof.)

There remains, therefore, for consideration under this Point II, (1) the finding that intraterritorial class rates within territories other than Official Territory and between all territories east of the Rocky Mountains are unreasonably high and the ordered adjustment with respect thereto and (2) the findings with respect to freight classification.

---

* While the Commission's ad interim order requires that these rates be reduced 10% subject to the limitation that the Appendix 10 scale of maximum reasonable rates be observed as minima the Commission's report contemplates the eventual reduction of said rates to said Appendix 10 level.

A. The Record Fails to Support the Commission's Finding That Intraterritorial Class Rates within Southern, Southwestern and Western Trunk-Line Territories and Interterritorial Class Rates Between All Territories East of the Rocky Mountains Are Unreasonably High and the Ordered Adjustment with Respect to Such Rates Is without Lawful Authority.

The record fails to sustain the Commission's finding that intraterritorial class rates applicable within Southern, Southwestern and Western trunk-line Territories are in excess of maximum reasonable rates. Admittedly these rates are higher than class rates within Official Territory, but costs also are higher in both the South and the West than in Official Territory (see pages 29 and 30 hereof and Sheets 147 to 151 of the report herein). Moreover, and, as has hereinbefore been pointed out at length at pages 33 to 35 hereof, differences in the consist of traffic, which have necessitated substantial differences in the distribution of the transportation burden in South and [fol. 580] West, on the one hand, and in Official Territory on the other hand, warrant the establishment and maintenance of higher class rates in the South and West than in Official Territory. While neither factor may by itself warrant the present differences in class rates, the two, combined, amply justify such differences. Cost differences clearly justify the 3 or 4% higher general rate level in the South and the 15% higher general rate level in the West, and the fact of a heavy preponderance in both regions of low grade and less remunerative traffic (which cannot move freely on higher rates) justifies the maintenance of relatively higher rates on the much smaller volume of remunerative "class" rate traffic. While data are not available of record concerning the profitableness of western operations under the existing rate scales, the record evidences clearly the fact that southern revenues have not exceeded just and reasonable revenues nor produced more than reasonable return on investment. Nor does the record warrant a finding that these revenues, reasonable in and of themselves, have been obtained, in unduly large part, from class rate traffic.

Similarly the record fails to sustain the finding that interterritorial class rates are unreasonably high. The only conceivable basis for such a finding is the finding

hereinbefore discussed, not supported by the record, that intraterritorial rates in Southern, Southwestern and Western trunk-line territory are unreasonably high. As this latter finding is unwarranted, the finding with respect to interterritorial rates necessarily fails of support.

The order directing adjustment of these rates, being based upon findings without support in the record, is unwarranted and without lawful authority.

[fol. 581] B. The Record Fails to Support the Commission's Findings That Existing Non-Uniformity of Classification Ratings Is Unlawful

While the Commission has purported to find that the present Official, Illinois, Southern and Western classifications are and for the future will be unjust and unreasonable in violation of Section 1 of the Act, this finding is wholly unsupported by the evidence of record, and the Commission's preliminary findings clearly so indicate. For, as the Commission states, on Sheet 56 of the report,

> "At the hearing the evidence produced relating to the classification of freight consisted chiefly of comparisons of the ratings in the three major classifications, the effect of the ratings upon the charges paid by shippers in the principal freight rate territories, and the extent to which the classifications have been departed from by the establishment of exception ratings and commodity rates. *There is no evidence which would enable us to determine whether any particular classification rating, description, or carload minimum is unreasonable.*" (Italics supplied)

While the Commission has also found that the Official, Illinois, Southern and Western classifications, in so far as the ratings therein are concerned, as a whole, and because of the substantial number of differences in such ratings, result and will result in undue and unreasonable preference and advantage in violation of Section 3(1) of the Act, these findings, similarly, are without support in the evidence of record herein and are, therefore, unwarranted. The Commission's finding that non-uniformity of classification ratings constitutes and will constitute a violation of Section 3 of the Act, and its finding that uniformity of such ratings is required if just and reasonable relationships are to be

maintained between class rates are premised upon two wholly [fol. 582] unsupported and unsupportable findings, namely, (1) that territorial differences in ratings generally produce differences in shipping charges paid on the same article in the different territories, and (2) that such territorial rating differences are unjustified. In this respect, the Commission's findings and conclusions follow the recommendations contained in the proposed report submitted by Examiners Paul O. Carter and William J. Koebel in Docket No. 28,310, to which report your petitioners filed exceptions and brief in support thereof, on February 15, 1944. Reference is made to said exceptions and brief in support of the argument directed to the invalidity of the Commission's findings that the existing lack of uniformity of classification ratings is unlawful in violation of Section 3 of the Act, and that uniformity is required. As therein pointed out, on a record which fails to establish that lack of uniformity of classification ratings has resulted in any differences in charges actually paid or required to be paid by shippers, or has produced any injury and which fails to establish that such lack of uniformity is not justified by transportation conditions including territorial differences in the volume of movement of particular commodities and in the incidence and effect of competitive factors, the Commission's finding that such lack of uniformity results in a violation of Section 3 of the Act cannot be sustained.

Conclusion

The issue in these proceedings is not whether uniformity of class rates and classification ratings is or is not desirable, but whether or not the existing lack of uniformity is unlawful and in violation of the Act.

The Commission in its report and decision has ruled that lack of uniformity in class rates is unlawful, has entered [fol. 583] an ad interim order requiring substantial rate adjustments, including a substantial upward adjustment of Official Territory class rates, and has made findings which imply that complete uniformity will ultimately be ordered.

But the evidence, and the Commission's subsidiary findings based thereon, do not warrant the Commission's findings of unlawfulness and do not therefore provide the basis for any order of general application herein.

Your petitioners are confident that upon reconsideration and reargument the Commission will conform its decision and order herein to the evidence and will be mindful of the following caveat expressed by the late Commissioner Joseph B. Eastman in his separate opinion in *State of Alabama v. New York Central Railroad Company*, 235 I. C. C. 255, 333 (1939):

> "The Commission is called upon to decide this case, on the record, after it has in effect been decided, in advance and without regard to the record, by many men in public life, of high and low degree, who have freely proclaimed their views on what they conceive to be the basic issues. Their thesis has been that the section of our country generally known as the South is our 'Economic Problem No. 1', because, among other things, it is low in industrial development, and that a major reason for this condition has been and is an unfair adjustment of freight rates which has favored the producers of the North and burdened those of the South. It has become a political issue. While, however, the South gave birth to the issue, public representatives of the West now cry out against like supposed oppression, and public representatives of the North or East, as it is variously called, have risen in defense of their section.
>
> Under such conditions, it is not easy to decide the case without being influenced by emotional reactions, one way or the other, which should play no part in the decision. It is all the more important, therefore, that [fol. 584] we should make every effort to reach our conclusions with cold impartiality, for this Commission has an equal duty with respect to every part of the country, and nothing will speed its ruin more quickly than the disease of sectionalism."

Wherefore your petitioners respectfully pray that these proceedings be reopened for reconsideration of the report and order; that said report and order, upon such reconsideration and after oral argument which is hereby requested, be revised; and that the effective date of the Commission's order herein be postponed, pending such reconsideration and the determination thereon.

Respectfully submitted, Henry E. Foley,

Counsel for

Horace A. Hildreth, Governor of the State of Maine
Charles M. Dale, Governor of the State of New Hampshire
Mortimer R. Proctor, Governor of the State of Vermont
Maurice J. Tobin, Governor of The Commonwealth of Massachusetts
J. Howard McGrath, Governor of the State of Rhode Island
Raymond E. Baldwin, Governor of the State of Connecticut

and

New England Traffic League
New England Shoe and Leather Association
New England Paper & Pulp Traffic Association
Grinding Wheel Manufacturers Association
Associated Industries of Maine
Associated Industries of Vermont
New Hampshire Manufacturers' Association
Associated Industries of Massachusetts
Associated Industries of Rhode Island, Inc.
The Manufacturers Association of Connecticut

[fol. 585] Certificate of Service

I hereby certify that I have this day served copies of the foregoing petition upon all parties in these proceedings listed in the Commission's notices regarding service of briefs by causing a copy or copies thereof to be mailed, properly addressed and prepaid, to each of said parties at their respective addresses as indicated in said notices.

Dated at Boston, Massachusetts, this thirteenth day of July, 1945.

Henry E. Foley, 10 Post Office Square, Boston, Massachusetts.

[fol. 586] In the District Court of the United States

Civil No. 2311

[Title omitted]

Affidavit—Filed December 13, 1945

Commonwealth of Pennsylvania
County of Dauphin, ss:

I, Floyd Chalfont, Secretary of Commerce of Pennsylvania, being duly sworn according to law depose and say

that, I am authorized to make this affidavit, and the facts submitted herein are true and correct; that if the orders of the Interstate Commerce Commission regarding freight rates issued in the above captioned case are permitted to stand, irreparable harm and damage to the Commonwealth of Pennsylvania and its citizens will follow.

Floyd Clialfont, Secretary of Commerce.

Sworn to and subscribed before me this 10th day of December, 1945. Lucille A. Stroup, Notary Public. (Seal.)

My commission expires Mar. 5, 1947.

[fol. 587] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945.

Gerrish Gassaway, being duly sworn, says:

1. That he is Secretary-Manager of the Chamber of Commerce of the State of Delaware, and resides in Wilmington, Delaware.

2. That he is familiar with a certain report and order of the Interstate Commerce Commission dated May 15, 1945, as amended, and a supplemental report and order dated October 30, 1945, in a proceeding which embraced two investigations instituted by the Commission and entitled respectively "Class Rate Investigation 1939" and "Consolidated Freight Classification."

3. That if said orders are not stayed pending final determination of the above-entitled action and are not then annulled and their enforcement permanently enjoined, and if, under the compulsion of said orders, the Railroads engaged in transportation within the Official Territory are [fol. 588] permitted or required to or do increase their Class Rates for interstate transportation 10%, The State of Delaware and the citizens and communities of said State as shipper will suffer great and irreparable injury by reason of the additional freight charges which they will be required

to pay for transportation of freight shipped or received by them, and more particularly the citizens and communities of said State will be discriminated against and will suffer great and irreparable injury in that among other things (a) the cost of doing business in the Official Territory will be increased, (b) the increased cost of manufacturing and distributing goods in the Official Territory will tend to restrict the free flow of said goods, to stimulate unemployment, and to destroy property values in the Official Territory, (c) shippers in the Official Territory will be required to pay increased Class Rates for the transportation of manufactured articles subject thereto which will be substantially on a parity with the reduced Class Rates prescribed for transportation within the South and West, while at the same time they will be required to continue to pay substantially higher transportation charges for the transportation of their raw materials and other low-grade freight than the transportation charges paid by their southern competitors, and (d) shippers and receivers of freight in the Official Territory will be required to pay higher freight charges than heretofore demanded by the railroads in that Territory or than justified by their transportation costs or other pertinent considerations in order that the Class Rates for transportation in the South and West may not be reduced more than 10%, all of which will subject The State of Delaware, its citizens and communities, to damage running into many millions of dollars, for which they will have no means of release or recoupment.

[fol. 589] 4. That typical of the commodities manufactured in the State of Delaware which are shipped on Class Rates and in connection with which great and irreparable injury will be suffered by the citizens and communities of The State of Delaware if said orders of the Commission are not stayed pending final determination of the above-entitled action and are not then annulled and their enforcement permanently enjoined include Aircraft Accessories, Animal Feeds, Brick, Concrete Block, Cork Products, Fertilizers, Hard Surface Floor Covering, Garments (other than cotton), Hose (rubber), Leather, Mattresses, Plumbing Fixtures, Snuff, Vulcanized Fibre, Laminated Plastics, Boilers (power, steel), Tanks (iron or steel), Roofing (prepared), Dry Transfers, Dental Supplies, Mechanics' Hand Tools, Power Hammers, Papermaking Machinery, Aviation Snips, Homogenizers, and Freezing Units.

5. That sundry and numerous products are shipped into The State of Delaware on Class Rates for consumers' use, and the shippers and receivers thereof will be required to pay higher freight charges than heretofore demanded, with the result that the cost of doing business in said State will be appreciably increased, which is without justification in that the freight charges demanded under said orders do not appear to be warranted on the basis of transportation costs.

Gerrish Gassaway, Secretary-Manager of the Chamber of Commerce of the State of Delaware.

Sworn to before me, this 12th day of December, A. D. 1945. C. M. Dillon, Notary Public. (Seal.)

[fol. 590] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

WALTER W. BACON, being duly sworn, says:

1. That he is the duly elected Governor of the State of Delaware, and that he resides in Wilmington, Delaware.

2. That he is familiar with a certain report and order of the Interstate Commerce Commission dated May 15, 1945, as amended, and a supplemental report and order dated October 30, 1945, in a proceeding which embraced two investigations instituted by the Commission and entitled respectively "Class Rate Investigation 1939" and "Consolidated Freight Classification."

3. That if said orders are not stayed pending final determination of the above entitled action and are not then annulled and their enforcement permanently enjoined, and if, under the compulsion of said orders, the Railroads engaged in transportation within the Official Territory are permitted [fol. 591] or required to or do increase their Class Rates for interstate transportation 10%, The State of Delaware and the citizens and communities of said State as shippers will suffer great and irreparable injury by reason of the additional freight charges which they will be required to

pay for transportation of freight shipped or received by them, and more particularly the citizens and communities of said State will be discriminated against and will suffer great and irreparable injury in that among other things (a) the cost of doing business in the Official Territory will be increased, (b) the increased cost of manufacturing and distributing goods in the Official Territory will tend to restrict the free flow of said goods, to stimulate unemployment, and to destroy property values in the Official Territory, (c) shippers in the Official Territory will be required to pay increased Class Rates for the transportation of manufactured articles subject thereto which will be substantially on a parity with the reduced Class Rates prescribed for transportation within the South and West, while at the same time they will be required to continue to pay substantially higher transportation charges for the transportation of their raw materials and other low-grade freight than the transportation charges paid by their southern competitors, and (d) shippers and receivers of freight in the Official Territory will be required to pay higher freight charges than heretofore demanded by the railroads in that Territory or than justified by their transportation costs or other pertinent considerations in order that the Class Rates for transportation in the South and West may not be reduced more than 10%, all of which will subject The State of Delaware, its citizens and communities, to damage running into many millions of dollars, for which they will have no means of release or recoupment.

[fol. 592] 4. That typical of the commodities manufactured in the State of Delaware which are shipped on Class Rates and in connection with which great and irreparable injury will be suffered by the citizens and communities of The State of Delaware if said orders of the Commission are not stayed pending final determination of the above-entitled action and are not then annulled and their enforcement permanently enjoined include Aircraft Accessories, Animal Feeds, Brick, Concrete Block, Cork Products, Fertilizers, Hard Surface Floor Covering, Garments (other than cotton), Hose (rubber), Leather, Mattresses, Plumbing Fixtures, Snuff, Vulcanized Fibre, Laminated Plastics, Boilers (power, steel), Tanks (iron or steel), Roofing (prepared), Dry Transfers, Dental Supplies, Mechanics' Hand Tools, Power Hammers, Papermaking Machinery, Aviation Snips, Homogenizers, and Freezing Units.

5. That sundry and numerous products are shipped into The State of Delaware on Class Rates for consumers' use, and the shippers and receivers thereof will be required to pay higher freight charges than heretofore demanded, with the result that the cost of doing business in said State will be appreciably increased, which is without justification in that the freight charges demanded under said orders do not appear to be warranted on the basis of transportation costs.

Walter W. Bacon, Governor of The State of Delaware.

Sworn to before me, this 12th day of December, A. D. 1945. Ruth R. Martin, Notary Public. (Seal.)

[fol. 593] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

GEORGE MACE, being duly sworn, deposes and says:

I am Manager of the Transportation Bureau of the Commerce and Industry Association of New York, Inc., the principal office of which is at 233 Broadway, New York, N. Y. This organization is a voluntary association incorporated and existing under the laws of the State of New York. Its members consist, among others, of manufacturing industries, commercial businesses and other shippers and receivers of freight located in New York City and elsewhere. One of the purposes of the Association is to foster the trade and welfare of New York including aid to its members in dealing with transportation problems with which they are confronted from time to time. One of my functions as Manager of the Transportation Bureau is to advise members of the Association in connection with these transportation problems. I am constantly in touch with a great number of the members and know of my own knowledge [fol. 594] that many of them ship and receive a large volume of freight that moves on class rates in interstate and foreign commerce between points in Official Territory in both carload and less-than-carload lots. In the event that the

Commission's orders in Docket No. 28300, *Class Rate Investigation, 1939*, are permitted to become effective the class rate charges which the members of the Commerce and Industry Association of New York, Inc. will be required to pay for the movement of their shipments by railroad in interstate and foreign commerce between points in Official Territory will be increased 10 per cent.

George Mace.

Sworn to before me this 13 day of December, 1945. Chas. S. Nelson, Notary Public, Westchester County. New York Co. Clerk's No. 149, Reg. No. 123-N-7. Commission Expires March 30, 1947. (Seal.)

[fol. 595] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

MARK A. DALY, being duly sworn, deposes and says:

I am Executive Vice President of Associated Industries of New York State, Inc. This organization is a membership corporation, organized and existing under the laws of the State of New York, with its principal office at 361 Delaware Avenue, Buffalo, N. Y. Its membership comprises approximately 1,400 concerns engaged in manufacturing in this State. These member concerns represent an investment of more than $4,000,000,000, and between them employ more than two thirds of all factory employees in New York State. Practically all of these concerns are engaged in the manufacture and sale of articles which are shipped by railroad at the class rates. They are shipped and sold at destinations throughout Official Classification Territory in competition with similar articles manufactured at other points. Many members of Associated Industries of New York State, Inc., also receive parts, machinery and equipment used by them in their production, for the transportation of which class [fol. 596] rates are charged. The freight rates paid upon these materials and on out-bound manufactured articles con-

stitute a substantial part of the cost to these concerns of doing business, manufacturing and selling their goods. Present-day manufacturing costs are already at a high level compared with permitted prices. A ten per cent increase in class rates, even for a short period, would impose a serious burden upon these manufacturing industries of New York State, for which they would have no means of reimbursing themselves if the orders of the Commission prescribing such increase should ultimately be held invalid. Either the increase, if it could be passed on to their buyers, would place them at a competitive disadvantage as compared with other manufacturers shipping under commodity or exception rates not affected by the Commission's orders or, if it could not be passed on in increased prices, would constitute an increased cost to be absorbed by them, which would be an obstacle in their business development and expansion.

This is a critical period in the conversion of manufacturing industries, such as the members of this organization, from war to peace-time production and any increase in manufacturing and distributing costs such as would result from a ten per cent increase in the class rates would be a serious obstacle to such reconversion and to the re-employment dependent upon it

Mark A. Daly.

Sworn to before me this 13 day of December, 1945.
Nathaniel Braun, Notary Public, New York County.
N. Y. County Clerk's No. 274. Commisison expires Mar 30, 1946. (Seal.)

[fol. 597] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311
[Title omitted]

AFFIDAVIT—Filed December 13, 1945

M. P. CATHERWOOD, having been duly sworn, deposes and says:

I am Commissioner of Commerce and head of the Department of Commerce of the State of New York. It is part of my duty, and in the discharge of my official functions I have occasion to be familiar with the manufacturing industries of this State, with their needs, their products and their markets. It is also my function to be alert to the possibili-

ties of locating new industries within the State and the problems incident thereto. At the present time one of the principal activities of myself and of my department is in relation to reconversion from war to peacetime production, seeking to find new products which industries in this State can produce and to develop new industries to provide employment for the many citizens of New York who have been previously employed by wartime industries or have been in the armed services, in order that the economic welfare of the citizens and communities of this State may be maintained.

[fol. 598] I was a witness in the proceeding before the Interstate Commerce Commission in which it made the orders involved in this suit and am familiar with that proceeding and with the Commission's report and orders therein.

There are many industries both large and small in the State of New York which manufacture articles distributed throughout Official Classification Territory which are shipped at class rates. I and my Department are also endeavoring, as a reconversion measure, to develop other products which can be manufactured in New York State, which will be shipped at class rates. One of the most serious problems at the present time is that of manufacturing goods at present-day costs and selling them at prices which will cover those costs and yield a profit sufficient to induce manufacture without violating price regulations or inducing inflation. Therefore, anything which will increase either manufacturing or distribution costs, especially just at this time, will impair and, in my opinion, seriously deter, industrial reconversion and reemployment. A 10 per cent increase in the freight rates for the transportation of finished products and of various inbound parts would, in my opinion, cause serious injury to individual industries in this State and would hamper and retard reconversion and the furnishing of employment, to the great detriment of the economic welfare of this State and all its citizens. If a 10 per cent increase in class rates should become effective, even if it remained in effect for only a short time, its consequence just at this particular period would be serious. If manufacturers should be permitted and attempt to add the in-

[fol. 599] creased freight rates to their sales prices, their competitive position would be impaired in relation to competing manufacturers selling in common markets, including

manufacturers shipping at commodity rates or other rates which will not be increased by the orders of the Commission herein. On the other hand, if manufacturers cannot increase their sales prices to cover the increased transportation costs resulting from the Commission's order, they will have no means of reimbursing themselves elsewhere and will be discouraged from engaging in or continuing manufacturing operations.

The State of New York is concerned over the orders of the Commission involved in this suit not only because of the effect which their enforcement would have upon the economic welfare of its citizens but also because the State of New York is itself a large purchaser of goods which move in interstate commerce at class rates and for the transportation of which it would therefore be subjected to increased costs or transportation charges if the class rates should be increased 10 per cent. Among the goods which the State of New York purchases for its institutions and its operating needs are large quantities of food products, drugs, clothing, furniture, automobiles and automotive equipment, crockery and petroleum products. An increase in the class rates would cause an increase, either immediately or ultimately, in the cost to the State of New York of these products needed by it in the exercise of its sovereign functions.

M. P. Catherwood.

Sworn to before me this 12 day of December, 1945. Ellen R. Murphy, Commissioner of Deeds City of New York. New York County Clerk's No. 51. Commission expires June 20, 1947.

[fol. 600] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT OF HONORABLE THOMAS E. DEWEY, GOVERNOR OF THE STATE OF NEW YORK—Filed December 13, 1945

STATE OF NEW YORK,
County of Albany, ss:

Thomas E. Dewey, being duly sworn, deposes and says:

I am the Governor of the State of New York, one of the plaintiffs in this suit.

In my capacity as Governor it has been my duty and I have had the occasion to familiarize myself with the general facts concerning the industrial and commercial enterprises of the State and the factors which affect the welfare of the citizens and communities of the State.

The State of New York is primarily an industrial state but it also has a large agricultural production. A large proportion of the population of the State is dependent upon industrial employment for a livelihood. A smaller but, nevertheless, important portion of the population is dependent upon the sale of farm products. The manufac- [fol. 601] turing industries of New York State are such that many of their products are articles which, as I am informed, ordinarily or in large part are transported at class rates. Among the industries which are important in New York State and upon whom large parts of the State's population depend for employment and upon whose continued operation in the State the welfare of many communities depends, are those producing such manufactured articles as electrical machinery, shoes, hosiery, knitted goods, house furnishings, canned goods, furniture, clothing, glass, a large portion of which is subject to class rates when transported by railroad. Many industries, especially in the urban centers, are small units. In the case of most of these industries costs of distribution play an important part in their ability to market their products and continue in operation. Any increase in these costs will impair the ability of these industries to market their products in competition with other manufacturers and will threaten the continued operation of these industries at their present locations in this State.

It has been the experience of this State that when industrial concerns shift their manufacturing operations to other localities they do not take with them the working people dependent upon the operation of the plants for their daily bread, but leave these people to go on relief unless and until they can be absorbed into other industries. This was the unfortunate experience of an important part of the population in the City of Utica when the textile companies formerly located there shifted their operations to plants elsewhere. It was the experience of the Jamestown district, [fol. 602] when a large part of the furniture industry, of which that district had been an important center, moved to other fields of production.

The situation of New York at the present time, confronted as is the whole country, with conversion from war production and with the problem of finding peace-time employment for its inhabitants is especially serious. During the war approximately one million factory workers in New York State, constituting about half of the total factory employment of this State, and about one out of every thirteen people of the entire population of the State, have been engaged in war production. Unless these people can now find employment in peace-time industries they will be without means of earning a livelihood and their support will become a charge of the city and federal governments. In addition employment must be found for the many men of this State who left their jobs to serve in the armed forces. Therefore, anything just at this time which would increase the cost of manufacturing goods in New York State and of distributing the products of industries in New York to points in New York State and elsewhere would threaten the economic welfare of the State and cause injury to its communities and citizens which could not thereafter be compensated for.

The order of the Interstate Commerce Commission which is involved in this proceeding, which would require an immediate increase of 10 per cent in the class rates of the railroads, would, as I am informed and believe, impose increased charges and, therefore, increased costs for the shipment and distribution of a substantial part of the [fol. 603] products of manufacturing industries in this State and of potential new industries which might otherwise locate in this State. I am convinced that this would be a serious burden on many industries in this State, and that it would constitute an important obstacle to the location of new industries in the State which might furnish employment for those for whom peacetime jobs must be found following the discontinuance of the war and war production. This is an immediate matter and if new industries fail to locate now or if existing industries are now induced to discontinue or diminish operation, there will be no adequate way of making good the injury caused if at the end of protracted litigation it should be determined that the Commission's order requiring a 10 per cent increase in the class rates of the railroads is invalid.

I am not unmindful that there are other sections of the country where it is claimed that the existing class rates are

unfair to them. I direct attention, however, to the fact, as I am informed, that the evidence in this proceeding indicates that class rate traffic in this part of the country where the Commission's order would require a 10 per cent increase constitutes 5.8 per cent of the total carload business of the railroads; whereas class rates are charged upon a 1.8 per cent of the carload traffic within the South and .6 per cent of that within the West. More than this, there is a very much greater volume of carload business in this territory than in the other sections.

My familiarity with the products of the State of New York leads me to believe that the proportion of its manufactured products for the transportation of which class [fol. 604] rates are charged, which would be increased 10 per cent, is greater than is represented by the percentage figure of 5.8 per cent for Official Territory as a whole.

I have previously stated that this State has a large agricultural production and that an important portion of the population is dependent upon the sale of farm products or other goods produced by the processing thereof. I am informed by the officials of the State directly concerned with such matters that a considerable proportion of the farm products and of processed foods and other articles made from farm products which are produced or processed in this State when shipped by railroad is charged class rates or rates which would be directly affected by changes in the class rates. An increase in the cost of distributing farm products or articles produced therefrom if passed to the consumers would increase food and living costs for people generally, and if the increases could not be passed on, would constitute an added burden upon farmers and food processors, which would discourage the production and processing of farm products in this State.

I am informed by the Attorney General and the Special Assistant Attorneys General of this State and by the experts employed by this State in connection with the proceedings before the Interstate Commerce Commission that, in their opinion, there are reasonable grounds for believing that the order of the Interstate Commerce Commission requiring a 10 per cent increase in the class rates on freight originating or terminating in this State and moving to and from other points in Official Territory is contrary to [fol. 605] and without support in the evidence before the

Commission, is based upon erroneous conclusions of law and should ultimately be held invalid.

It is my firm opinion, for the reasons stated, that if the enforcement of the Commission's order is not stayed pending the final determination herein as to its validity, and if the Commission's order should ultimately be held invalid, the State of New York and its citizens will suffer and will have suffered irreparable injury for which they will have no means of redress.

Thomas E. Dewey.

Signed and sworn to before me this 12th day of December, 1945. Irene E. McKenna, Notary Public, Albany County. (Seal.)

[fol. 606] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT OF CHARLES E. BELL—Filed December 13, 1945

STATE OF NEW YORK,
County of New York, ss:

Charles E. Bell, being duly sworn, deposes and says:

I reside at 6007 Thirty-Third Street, N. W., Washington, D. C., and have an office in that city.

1. I have been engaged in transportation work for over fifty (50) years. Since 1918 I have been engaged in business as a transportation consultant and adviser to railroads, industries and others in regard to their transportation problems. My functions in this capacity have required that I become thoroughly familiar with the rate structures throughout the country and to make numerous cost studies of various kinds relating to the transportation of freight by railroads. I have appeared in a large number of proceedings before the Interstate Commerce Commission and before State Commissions. I have been employed from time to time by the United States Government as a consultant in regard to traffic and transportation problems and in

[fol. 607] administrative positions. I have also been employed by foreign governments, with respect to traffic and transportation matters.

2. I was employed and presently am in the employ of the State of New York in connection with these proceedings. In this capacity I prepared cost studies for use in the proceedings had before the Commission in Docket No. 28,300 Class Rate Investigation, 1939, and Docket No. 28,310 Consolidated Freight Classification, which proceedings and the orders therein are the subject matter of this suit. I also analyzed the rate structure of the different territories and prepared exhibits and testimony in connection therewith. I also made an analysis of the cost studies prepared by Dr. Edwards, Chief Cost Analyst of the Interstate Commerce Commission, which studies were presented in evidence in these proceedings. I attended all the hearings before the Interstate Commerce Commission and also a portion of the oral arguments before the Interstate Commerce Commission. I assisted Parker McCollester, Special Assistant Attorney General of the State of New York in the preparation of the briefs filed by him on behalf of that State and also consulted with him at great length in the preparation of the testimony and evidence presented by me on behalf of the State of New York.

3. As a result of the foregoing studies and participation in the proceedings before the Commission it is my opinion that the cost studies presented by Dr. Edwards are in themselves defective as purporting to reflect the cost of transporting freight in Official, Southern and Western Territories, and that even if they could be considered correct in this respect they do not indicate the cost of handling class rate traffic in these territories.

4. It is my judgment that the Edwards cost studies do not portray the comparative costs of transporting any particular character or type of freight in the various terri- [fol. 608] tories; nor, for that matter, the cost of transporting all freight. This opinion is predicated on the following reasons, not to mention many others:

(1) The costs in each of the respective territories portrayed by the studies are based on the average gross ton-mile unit cost per mile of road and upon a unit average of all the terminal costs per car. These unit

costs are derived from the total costs of all the railroads in each territory for the transportation of all freight regardless of its character and the different types of freight, whether coal, iron ore, sand and gravel, logs, millinery, boots and shoes, refrigerators, electrical appliances, etc., etc.; also regardless of the volume of the movement of any commodity or character of freight, regardless of the kinds of trains in which the freight is transported, whether it is transported over main lines or branch lines, whether over railroads of high or low traffic density, whether over heavy or light grades, and regardless of the length of haul. The total line-haul costs of all the railroads in each territory are added together and the total figure so ascertained is divided by the number of gross ton miles in that territory to arrive at an average unit gross ton-mile cost of all freight transported. The terminal costs of each railroad are added together, the total being divided by the total number of cars accorded terminal services to arrive at unit costs. The unit line-haul costs and the unit terminal costs are added together to arrive at the total cost per mile of road in the respective territories.

[fol. 609] The so-called box-car, gondola and hopper car, refrigerator car, flat car, and tank car line-haul costs simply reflect the average tare weights of the respective types of cars added to the average weights of the lading and the resulting gross ton miles are multiplied by the average gross ton-mile unit costs arrived at in the manner above recited. The average terminal cost is divided by the weight of the lading regardless of the character of the lading or the type of cars used. This terminal cost is added to the line-haul cost regardless of the length of haul.

Manifestly, the purported costs do not reflect the true cost of transporting class rate freight nor the true cost of transporting any commodity.

(2) The costs are based on many assumptions which appear in the evidence of record but which are too numerous to recite here.

(3) In the computation of the Edwards costs for Official Territory there was omitted the costs of the railroads in that part of Official Territory which is

generally known as the Pocahontas Region. The Edwards studies are predicated upon the fiction that the Pocahontas Region is a rate territory when, as a matter of fact, it is a part of the Official rate territory and has been found to be such in many decisions of the Interstate Commerce Commission. See, for example, 58 I. C. C. 220, 225 and 164 I. C. C. 314, 322.

It is my opinion, therefore, that the findings of the major-
[fol. 610] ity of the Commission that the average costs of transporting all freight in Southern Territory is not greater than the average cost of transporting all freight in Official Territory is unfounded and is not adequate to support its order and finding that the class rates involved in the proceeding are unlawful.

5. It is my judgment, based upon my experience and general knowledge and the studies I have made, that the Commission's findings that the class rates within Southern and Western Territories should be reduced 10% and those within Official Territory increased 10% are not warranted. The transportation conditions vary greatly in various territories. There are important differences in the kinds and character of freight transported and the volume of the movement of the different kinds of freight. This has an important bearing upon the manner in which the transportation burden is distributed in the respective territories. The boundaries of the three major rate territories, viz., Official, Southern and Western, conform generally, with some few exceptions, with the termini of the major railroad systems serving each territory. These major railroad systems in each territory are generally competitive with each other but not with railroads or railroad systems in other territories. The railroads in each territory are affected by common physical and industrial conditions within such territory which differ to a very great extent in other territories. By reason of the differences above recited the levels of the class rates within the South and the West and from those territories to Official Territory are higher than the class rates within Official Territory.

6. Based upon my general knowledge and investigations and studies I have made I know that the rates, generally, on raw materials and other low grade, heavy loading commodities moving within Southern Territory are lower, mile-for-

mile, and some of them to a very substantial extent, than [fol. 611] the rates on the same materials and commodities moving within Official Territory.

7. The volume of freight moving on class rates in Official Territory far exceeds the volume of freight moving on class rates within Southern and Western Territories.

8. It is my opinion, based upon a close study of the record in the proceedings in Docket 28,300, that there is no evidence contained therein that could possibly support a finding that the class rates within Official Territory are unremunerative and are less than reasonable compensatory rates and that, therefore, they should be increased 10%.

9. It is my opinion that the difference in the rates of return shown to have been earned by the respective rail lines in Official, Southern and Western Territories does not justify an increase in the class rates in Official Territory.

10. It is my opinion that since the record in this case is based largely upon railroad, industrial and other economic statistics for the year 1939, it does not correctly portray the transportation, economic and industrial situation in the respective territories as it exists today. It is my judgment that these conditions have radically changed since 1939 and that the evidence of record is not adequate to support an order for the future. I base this opinion upon the fact that I have been continually in touch with railroad, transportation and industrial conditions since 1939. It is also my opinion that at no time in the forseeable future will the transportation, industrial and economic situations be similar to that which existed in 1939.

11. A 10% increase in the class rates within Official Territory will affect a much larger volume of traffic and the freight revenues derived therefrom than a 10% reduction in the class rates within the South and in the West and from those territories into Official Territory. I have made what I consider to be approximately accurate computations of the minimum additional amounts which the shippers and receivers of freight in Official Territory will be required [fol. 612] to pay on carload and less-than-carload class rate traffic within that territory and as compared with the reductions on class rate traffic moving within Southern Territory and Western Territory if the Commission's

order, increasing the class rates in Official Territory and reducing the class rates in Southern and Western Territories, is permitted to stand. These approximations and the basis for my computations appear in Appendices Nos. 1 and 2, hereto attached and made a part hereof. The computations for carload traffic are for the year 1942, which is the year dealt with at Pages 564-566 of the Commission's report in this proceeding. The computations for less-than-carload class rate traffic are based on the tonnage and ratios appearing on Pages 568-569 of the Commission's report, applied to the total tonnage and revenues of less-than-carload traffic for the year 1942.

Table No. 6 of Appendix No. 1 discloses that an increase of 10% in the rates on carload class rate traffic moving within Official Territory will amount to $9,171,671 and that a reduction of 10% on carload class rate traffic moving within Southern Territory will amount to $648,888.90, and in Southwestern Territory will amount to $508,528.30. Stated differently, the amount of the reduction in Southern Territory is $6.52% of the amount of the increase within Official Territory and in Southwestern Territory the reduction is 5.54%. The revenue figures are not available for Western Trunk Line Territory which constitutes a part of the Western District for which the Commission's statistics cover that entire District without any separation for Western Trunk Line Territory.

The total number of carloads of class rate traffic moved in Official, Southern, Western Trunk Line and Southwestern Territories during the period shown on Page 565 of the Commission's report are not shown in Appendix No. 1. However, by applying the percentages that the carload class rate traffic is of the total carload traffic moved within the [fol. 613] respective territories for that period as shown in Table No. 1 of Appendix No. 1, viz., 5.8% in Official Territory, 1.8% in Southern Territory, 0.6% in Western Trunk Line Territory, and 2.4% in Southwestern Territory, it will be found that 6,491 cars of class rate traffic moved within Official Territory, 423 within Southern Territory, 194 within Western Trunk Line Territory, and 264 within Southwestern Territory. Stated differently, more than 15 times as many cars of class rate traffic moved in Official Territory than in Southern Territory, more than 33 times as many cars than in Western Trunk Line Territory, and more than 24 times as many cars than in Southwestern Territory.

The shippers in Southern and Western Territories are primarily concerned with obtaining a level of rates from those territories to Official Territory which will be on a mile-for-mile parity with the rates in Official Territory. As hereinbefore stated, and as appears at Page 564 of the Commission's report in this proceeding, 5.8% of all carload traffic moved within that territory at class rates, amounting to 6,941 carloads for the period shown in the Commission's report. Exhibit No. 194, introduced in evidence by a witness for the Commission, shows that 15,989 carloads of traffic moved from Southern Territory to Official Territory in the same period. As the Table at page 564 of the report discloses, only 0.9% of that traffic consisted of class rate traffic, amounting to 144 cars, and as shown at page 566 of the Commission's report. Exhibit No. 194 shows that 8,246 carloads of traffic moved from Western Trunk Line Territory to Official Territory and 5,833 cars from Southwestern Territory. As the Table at Page 564 of the Commission's report discloses, 3.1% of the carload traffic from Western Trunk Line Territory to Official Territory moved at class rates and 1.5% from Southwestern Territory. Therefore, only 256 cars of class rate traffic moved from Western Trunk Line Territory to Official Territory and 88 cars from South-[fol. 614] western Territory. The combined movement from Southern, Western Trunk Line and Southwestern Territories was 488 cars compared with 6,491 cars moving within Official Territory. There is nothing in the record or in the files of the Interstate Commerce Commission which shows the revenues on this interterritorial movement of class rate traffic, nor are there any statistics from which such revenues can be computed.

The total number of carloads of class rate traffic moving within Southern, Western Trunk Line, and Southwestern Territories was 881 cars which, added to the total of 448 cars moving from those territories to Official Territory makes a grand total of 1,369 cars. This total is less than 22% of the 6,491 cars of class rate traffic moving within Official Territory during the same period.

Table No. 9, of Appendix No. 2, discloses that an increase of 10% in the class rates on less-than-carload traffic moving within Official Territory will amount to $6,264,931 and that a reduction in the class rates on less-than-carload traffic moving within Southern Territory will amount to $984,747. An examination of Appendix No. 2 will disclose the method

employed to arrive at the above figures. As Note 1, on Page 4 of Appendix No. 2, discloses, the figures shown for "Western Territory" are for the entire Western District, whereas only the rates within the Western Trunk Line portion of that District are involved in these proceedings. Therefore, figures shown for what is termed "Western Territory" and the "Western District" appearing in Appendix No. 2, considerably overstate the actual figures for Western Trunk Line Territory and it is not proper to compare them with the figures for Official and Southern Territories.

I have already shown herein how greatly the importance of carload class rate traffic in Official Territory exceeds that in Southern and Southwestern Territories. Table No. 3 of Appendix No. 2 shows likewise for less-than-carload class rate traffic and that 95.1% of the total less-than-carload traf- [fol. 615] fic moves on class rates in Official Territory compared with 41.8% in Southern Territory. Table No. 2 shows that the ratio of less-than-carload traffic moving on commodity rates within Official Territory is only 5.1% compared with 139.2% in Southern Territory; also that the ratio in Western Territory is 40% and that 71.4% of the less-than-carload traffic moving within Western Territory was on class rates. Table No. 1 shows that the total of all less-than-carload traffic in Official Territory is 3 times that in Southern Territory and is nearly 2½ times that in Western Territory.

As hereinbefore appears, I estimate that the minimum increase within Official Territory on carload class rate traffic will amount to $9,171,671. Adding to this figure the estimated minimum increase of $6,264,931 on less-than-carload class rate traffic makes a minimum total increase of $15,436,602, which the shippers and receivers of class rate traffic in Official Territory will have to pay if the Commission's findings and order in this proceeding are permitted to stand. On the other hand, the shippers and receivers in Southern Territory would get a reduction of $648,880.90 on carload class rate traffic moving within that territory and a reduction of $984,747 on less-than-carload traffic, making a grand total reduction of $1,632,635.90. The shippers and receivers in Southwestern Territory would get a reduction of $508,528.30 on carload class rate traffic moving within that territory. Inasmuch as no revenue figures are available for Western Trunk Line Territory, as distinguished from the Western District, it is not possible to approximate the reduc-

tions on either carload or less-than-carload class rate traffic within that territory. Inasmuch as no separate figures are available for less-than-carload traffic in Southwestern Territory, it is not possible to estimate the reductions on such traffic in that territory.

For the foregoing reasons, if the plaintiff herein is denied [fol. 616] a temporary injunction it will subject the shippers and receivers of freight in Official Territory to irreparable injury.

Charles E. Bell.

Signed and sworn to before me this 13th day of December, 1945. Raymond J. Martin, Notary Public. Kings County Clk's No. 57, Reg. No. 67-M-6. Bronx County Clk's No. 8, Reg. No. 18-M-6. Queens County Clk's No. 79, Reg. No. 28-M-6. N. Y. County Clk's No. 202, Reg. 125-M-6. Term expires March 30, 1946. (Seal.)

(Here follows 5 photolithographs, side folios 617-621)

APPENDIX NO. 1

TABLE NO. 1

STATEMENT OF CARLOAD TRAFFIC MOVING INTRATERRITORIALLY WITHIN AND INTERTERRITORIALLY FROM AND TO THE FOLLOWING TERRITORIES ON MAY 27 AND SEPTEMBER 23, 1942 AS SHOWN IN REPORT OF INTERSTATE COMMERCE COMMISSION, I.C.C. DOCKETS 28300 AND 28310

262 I.C.C. 447, 565-566

	Official Territory		Southern Territory		Western Trunk Line Territory		Southwestern Territory	
	No. of Cars	% of Total	No. of Cars	% of Total	No. of Cars	% of Total	No. of Cars	% of Total
Within	111,914	67.5	23,512	44.6	32,989	56.8	10,985	40.4
From Other Territories	33,693	-	10,566	-	12,943	-	4,870	-
To Other Territories	20,215	-	18,649	-	12,120	-	11,356	-
Total	165,822		52,727		58,052		27,211	

TABLE NO. 2

PERCENTAGE CLASS RATE TRAFFIC IS OF INTRATERRITORIAL TRAFFIC

(SEE TABLE ON PAGE 564 OF 262 I.C.C.)

	Official Territory	Southern Territory	Western Trunk Line Territory	Southwestern Territory
Within	5.8%	1.8%	.6%	2.4%

TABLE NO. 3

FREIGHT REVENUE ON CARLOAD TRAFFIC IN YEAR 1942

(Authority - I.C.C. Freight Commodity Statistics, Statement No. 4310C)

Official Territory (Eastern District)	Southern Territory (Southern Region)	Western Trunk Line Territory	Southwestern Territory (Southwestern Region)
$2,342,714,958	$508,282,217	No Figures Available	$524,472,243

TABLE NO. 4

FREIGHT REVENUE ON INTRATERRITORIAL CARLOAD TRAFFIC. (COMPUTED BY APPLYING PERCENTS SHOWN IN TABLE NO. 1 TO CARLOAD FREIGHT REVENUES SHOWN IN TABLE NO. 3)

Official Territory (Eastern District)	Southern Territory (Southern Region)	Western Trunk Line Territory	Southwestern Territory (Southwestern Region)
$1,581,332,587	$360,493,869	No Figures Available	$211,886,786

TABLE NO. 5

ESTIMATED FREIGHT REVENUE ON INTRATERRITORIAL CARLOAD CLASS RATE TRAFFIC. (COMPUTED BY APPLYING PERCENTS SHOWN IN TABLE NO. 2 TO INTRATERRITORIAL CARLOAD FREIGHT REVENUES, SHOWN IN TABLE NO. 4

Official Territory (Eastern District)	Southern Territory (Southern Region)	Western Trunk Line Territory	Southwestern Territory (Southwestern Region)
$91,716,710	$6,488,889	- - - - -	$5,085,283

TABLE NO. 6

ESTIMATED AMOUNT OF 10% INCREASE OR REDUCTION IN CARLOAD CLASS RATE FREIGHT REVENUES, SHOWN IN TABLE NO. 5

Official Territory (Eastern District)	Southern Territory (Southern Region)	Western Trunk Line Territory	Southwestern Territory (Southwestern Region)
Increase	Reduction		Reduction
$9,171,671.00	$648,888.90	- - - - -	$508,528.30

APPENDIX NO. 2

TABLE NO. 1

TOTAL NUMBER OF POUNDS OF LESS-THAN-CARLOAD TRAFFIC, UNDER TYPE OF RATES CARRIED FOR THE WEEK OF SEPTEMBER 8 TO 14, 1939, INCLUSIVE IN

	OFFICIAL TERRITORY	SOUTHERN TERRITORY	WESTERN TERRITORY (See Note 1)
Intraterritorial	292,487,885	97,694,576	179,622,327
Originated	347,317,520	125,215,886	190,837,014
Terminated	318,572,095	130,275,846	214,528,479
Total Originated and Terminated	665,889,615	255,491,732	402,359,493
Percent Intraterritorial of Total Originated and Terminated	43.92	38.24	44.31

(Authority - Page 568 of 262 I.C.C.)

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TABLE NO. 2

RATIO OF LESS-THAN-CARLOAD TRAFFIC MOVING ON COMMODITY RATES TO THE TOTAL LESS-THAN-CARLOAD TRAFFIC MOVING ON CLASS RATES.

In Official Territory	5.1 percent
In Southern Territory	139.2 percent
In Western Territory	40.0 percent

(Authority - Page 569 of 262 I.C.C.)

TABLE NO. 3

RATIOS IN TABLE NO. 2 CONVERTED TO PERCENTS OF TOTAL LESS-THAN-CARLOAD TRAFFIC.

Moving on Commodity Rates	Moving on Class Rates
4.9 percent	95.1 percent
58.2 percent	41.8 percent
28.6 percent	71.4 percent

(Authority: Computed)

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620

TABLE NO. 4

NUMBER OF POUNDS OF LESS-THAN-CARLOAD TRAFFIC CARRIED IN YEAR 1942, BY CLASS I RAILROADS

	In Eastern District (Official Territory)	In Southern Region (Southern Territory)	In Western District (Western Territory) (See Note 1)
Originated	18,872,468,000	5,957,844,000	9,383,256,000
Terminated	16,367,352,000	6,201,022,000	10,778,660,000
Total	35,239,820,000	12,158,866,000	20,161,916,000

(Authority - I.C.C. Statement No. 43100)

TABLE NO. 5

NUMBER OF POUNDS OF LESS-THAN-CARLOAD TRAFFIC CARRIED INTRATERRITORIALLY. (COMPUTED BY APPLYING PERCENTAGES IN TABLE NO. 1 TO TOTAL NUMBER OF POUNDS SHOWN IN TABLE NO. 4

In Eastern District (43.92%)	In Southern Region (38.24%)	In Western District (See Note 1) (44.31%)
15,477,328,944	4,649,550,358	8,933,744,980

TABLE NO. 6

NUMBER OF POUNDS SHOWN IN TABLE NO. 5 CARRIED AT CLASS RATES

(COMPUTED BY APPLYING PERCENTAGES IN TABLE NO. 3 TO FIGURES IN TABLE NO. 5)

Eastern District		Southern Region		Western District (See Note 1)	
(95.1%)	14,718,939,826	(41.8%)	1,943,512,049	(71.4%)	6,378,693,916

TABLE NO. 7

TOTAL FREIGHT REVENUE IN 1942 OF ALL CLASS I RAILROADS

FROM ALL LESS-THAN-CARLOAD TRAFFIC

Eastern District (Official Territory)	Southern Region (Southern Territory)	Western District (Western Territory) (See Note 1)
$149,993,858	$61,607,097	$116,322,958

(Authority - I.C.C. Statement No. 43100)

TABLE NO. 8

FREIGHT REVENUE ON INTRATERRITORIAL TONNAGE OF LESS-THAN-CARLOAD TRAFFIC

(COMPUTED BY APPLYING PERCENTAGES IN TABLE NO. 1 TO REVENUES SHOWN IN TABLE NO. 7)

Eastern District	Southern Region	Western District (See Note 1)
(43.92%)	(38.24%)	(44.31%)
$65,877,302	$23,558,554	$51,542,703

TABLE NO. 9

FREIGHT REVENUE ON INTRATERRITORIAL TONNAGE OF LESS-THAN-CARLOAD TRAFFIC CARRIED AT CLASS RATES. (COMPUTED BY PLYING PERCENTAGES IN TABLE NO. 3 TO FIGURES IN TABLE NO. 8)			ESTIMATED AMOUNT OF 10% INCREASE OR REDUCTION IN REVENUE, BASED ON ORDER OF I.C.C. IN DOCKET NO. 28300		
Eastern District	Southern Region	Western District (See Note 1)	Eastern District Increase	Southern Region Reduction	Western District (See Note 1) Reduction
.1%) $62,649,314	(41.8%) $9,847,476	(71.4%) $36,801,490	$6,264,931	$984,747	$3,680,149

[fol. 622] NOTE 1

The term "Western Territory", appearing in the Table on Page 568, 262 I. C. C., includes the entire "Western District" which embraces all the territory west of the Mississippi River. The tonnage and revenues for the Western District are shown in I. C. C. Statement No. 43100. The report and order of the Commission in Docket No. 28300 only includes the territory east of the Rocky Mountains and does not include the territory west thereof which is termed "Mountain Pacific" territory. The tonnage and revenue figures shown herein are overstated, therefore, by reason of the inclusion of the Mountain Pacific territory, the rates within and to and from which are not involved in this proceeding. Separate figures are not available for the above mentioned portions of the "Western District".

[fol. 623] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

PARKER MCCOLLESTER, being duly sworn, deposes and says:

1. I reside at 24 Gramercy Park, New York, N. Y. I am a lawyer, with an office at No. 25 Broadway, New York, and am a member of the Bar of the Supreme Court of the United States, of various United States District Courts, and of the courts of New York State. I was employed by the State of New York as Special Assistant Attorney General to represent it in proceedings before the Interstate Commerce Commission entitled "Docket No. 28300, *Class Rate Investigation, 1939*", and "Docket No. 28310, *Consolidated Freight Classification*, and have been employed to represent the State of New York in this action involving the validity of the reports and orders made by the Commission in those proceedings.

2. I have been practicing law for approximately thirty years. During those years a large part of my practice has consisted of acting as counsel for railroads and other trans-
[fol. 624] portation agencies and also for shippers using

such transportation agencies, and for Chambers of Commerce and public bodies in various transportation matters such as rates and charges of carriers. I have appeared for clients in a large number of proceedings before the Interstate Commerce Commission, the State Commissions and the Federal and State Courts relating to such matters. As a consequence of this experience, I have become reasonably familiar with the body of statutory and common law pertaining to the lawfulness of the rates and practices of common carriers, and with various practical and economic phases of transportation.

3. For a statement of the matters involved in this suit, the nature of the Commission's proceedings and of its reports and orders therein, of the grounds for believing that those reports and orders are erroneous, and invalid, and should be enjoined, and for the reasons for this suit insofar as New York is concerned, I refer to the petition herein, whose allegations I adopt as expressing my own knowledge of the facts and my own opinions, based upon my experience and knowledge of the law and my familiarity with the record in those proceedings.

4. The orders of the Commission sought to be enjoined would require the railroads in so-called Official Territory, which is roughly that part of the United States north of the Ohio and Potomac rivers, to make an increase of ten per cent in their class rates for transportation within this territory effective not later than January 1, 1946. Since the orders require that these rates shall be made effective on not [fol. 625] less than thirty days' notice, the railroads have already filed with the Interstate Commerce Commission their tariff schedules providing for the increases, but have given assurance that if the Commission's order is enjoined and they are thereby relieved from its compulsion they will postpone or cancel the increases.

5. The petition herein alleges that the Commission's findings and orders are contrary to and without support in the evidence before the Commission and are therefore arbitrary and capricious and also that they are based upon various errors of law. For the determination of this suit, it will therefore be necessary for the court to review the record, which will be presented to the court, of the extensive evidence before the Commission. This evidence consists of

some 5,490 pages of testimony and 233 statistical exhibits, some of them very voluminous. It will obviously be impossible for the court, in the time available between now and January 1, 1946, adequately to study this record in order to reach a proper determination as to whether or not it contains substantial evidence to support the Commission's findings and orders. I believe, also, that the questions of law which are raised are such that before reaching a final determination the court should have the benefit of briefs and argument of counsel, which cannot be adequately prepared and submitted before the present effective date of the Commission's orders. It is for these reasons that a temporary injunction is sought to restrain the enforcement of the Commission's orders pending final submission and determination of the serious and far-reaching issues involved in this suit.

6. It is my understanding of the law that this court, in the exercise of judicial discretion, should grant a prelimi- [fol. 626] nary injunction if it appears (a) that there are reasonable grounds to believe that the Commission's reports and orders may be in error and invalid, and (b) that substantial and irreparable injury will be done if the orders are not enjoined in the event it is finally determined that they are invalid. It is admitted that there are some who will benefit by the enforcement of the Commission's orders and who, therefore, would suffer some injury if the orders are temporarily enjoined and if it should thereafter be finally determined that they were valid. It is, however, my understanding of the law that in such a situation the court, in granting or denying a temporary injunction, should be governed by the balance of the equities. It is my opinion, based upon my knowledge of the facts disclosed by the evidence in this proceeding and upon the facts set forth in other affidavits which will be submitted herewith, that the injury which the State of New York and other plaintiff states and their citizens and communities and industries will suffer if a temporary injunction does not issue and if the orders are ultimately held invalid will be far greater than the loss of the small temporary benefit which other parties might obtain if the orders should be permitted to go into effect on January 1, 1946 and that, furthermore, if the Commission's orders should ultimately be determined to be valid the law provides adequate remedy for any temporary injury which

others may have suffered from the failure to make effective on January 1, 1946 the reductions in class rates required by the Commission's orders.

7. The Commission's reports indicate that the basis of the Commission's orders requiring an interim increase of ten per cent in the class rates for railroad transportation [fol. 627] within Official Territory, is the conclusion of the Commission that the class rates should be established upon a uniform level throughout the entire country east of the Rocky Mountains and although the class rates were prescribed by the Commission itself, nevertheless, because they are not on a uniform level, they are unlawful in violation of Section 1 of the Interstate Commerce Act and unduly prejudicial of certain sections of the country, notably the South and West, and preferential of Official Territory in violation of Section 3 of the Interstate Commerce Act. This basic conclusion of the Commission appears from the reports to rest in turn upon the following underlying findings or assumptions:

(a) That the evidence shows that there are no substantial differences in the costs of transporting class rate traffic by the railroads in the several sections of the country.

(b) That the evidence indicates such absence of differences in the volumes and characters of freight transported in different sections of the country as to require uniform class rates.

(c) That the rate of return on the book values of their properties has been less for the railroads in Official Territory than for the railroads in the South and West and that this indicates that the class rates in Official Territory should not be lower than those in the other territories.

(d) That the evidence shows that the differences in the levels of the class rates have impeded the free [fol. 628] movement of freight on which such rates are charged and have prevented industries and shippers in the South and West from shipping at class rates into northern markets and have restricted the industrial development of those sections.

(e) That the amendment of Section 3 of the Interstate Commerce Act and the enactment by Congress of Section 5(b) of the Transportation Act, 1940 justify a requirement that the class rates be made uniform throughout the country.

8. I have attended all of the hearings in this proceeding, I have heard or read all of the testimony and examined all of the exhibits and am familiar with the record before the Commission. It is my opinion, based upon that familiarity, that despite the large size of the record it contains no substantial evidence to support any of the foregoing findings or assumptions of fact upon which the Commission's orders rest, and that indeed certain of these findings or assumptions of fact are contrary to the evidence. It is my opinion, also, that the Commission has proceeded on erroneous views of the law and that its orders are contrary to the law and beyond the authority of the Commission under the Interstate Commerce Act.

9. As to the complete insufficiency of the evidence before the Commission to support its preliminary findings and ultimate conclusion, I refer the court also to the vigorous dissenting expressions of members of the Commission who participated in its deliberations.

[fol. 629] 10. The decision in Dockets Nos. 28300 and 28310 was considered by the whole Commission of eleven Commissioners. Three members of State Commissions, who acted as a Cooperating Committee with the Commission, also participated in the proceedings and in the decision. The decision of the Interstate Commerce Commission and the Cooperating State Committee was not unanimous. Two of the members of the Interstate Commerce Commission, Commissioners Porter and Barnard, dissented in full from the decision reached by the majority of seven. Two of the members dissented in part and one of the members of the State Cooperating Committee dissented in full from the opinion of the majority. These dissents and the views expressed therein by men who participated in the discussion certainly cast serious doubt upon the correctness of the decision of the majority, and should carry weight with this Court in passing upon this application for an interlocutory injunction. *United States* v. *Balt. & Ohio RR. Co.*, 225 U. S. 306, 325.

11. As to transportation costs, the Commission's reports leave no doubt that the majority were led to their basic conclusion in large part because of a belief that the evidence supported a preliminary finding or conclusion that the costs of transporting class rate traffic in the several territories were approximately the same. The importance attributed to this phase of the matter by the majority is indicated by the large part of the reports, pages 571 to 591, 609 to 613, 693 to 694, devoted thereto. Thus at page 692, the majority stated that the "cost of service has been recognized as one of the basic elements entering into the process of making and judging rates" and that the "reality of costs in the rendition of transportation service is indisputable". [fol. 630] The emphasis which the majority placed upon the average cost studies in determining the lawfulness of the class rates in issue is indicated by its remarks at page 694:

> "Applying the foregoing principles to the issues in this proceeding, there is no doubt that, based on cost of service considerations, the differences in levels, schemes, and progressions of scales that at present occur in the several territorial class-rate structures here under review are not justified."

The evidence as to costs referred to and relied upon by the majority consisted of various studies and computations prepared by Dr. Ford K. Edwards of the Commission's staff and Dr. Edwards' testimony with regard thereto. However, admitting the sincerity and care devoted by Dr. Edwards to these studies, they do not support the conclusion of the majority here for several reasons:

(a) They do not and do not purport to indicate either the actual or even the relative costs of transporting class rate freight in the several territories, and this proceeding relates only to class rates. The computations are based upon railroad statistics relating to all freight of every kind. As the majority of the Commission itself said:

> "*Relative territorial costs.*—Territorial cost comparisons were based on the cost of furnishing a given amount of transportation service in the respective territories, taking into consideration every kind of traffic carried, whether handled in box, gondola, tank, stock,

flat, or refrigerator cars, and covering 300 miles of haul." (P. 575)

The opinion of the majority contains no finding or intimation of how the average cost of handling all freight can be considered as an indication of the cost of handling traffic [fol. 631] moving on class rates or of determining the lawfulness of such rates. Heretofore the Commission has recognized in other proceedings that the average cost of handling all freight cannot be considered indicative of the cost of handling a particular class of freight. Thus, in *Calif. Growers' & Shippers' Protective League* v. *S. Pac. Co.*, 129 I. C. C. 25, the Commission said at page 52:

> "Cost studies prepared in the same manner as those referred to at pages 95 et seq. of the prior report of the division were introduced by defendants. They reach conclusions not materially different. If these are accepted, the deciduous-fruit traffic is carried at a loss. They are based on the average cost of handling all traffic, and cannot be accepted as showing the cost of the deciduous-fruit tonnage. *Nor. Pacific Ry. Co. v. Dept. Public Works*, 268 U. S. 39. It will be unnecessary to refer to them further, as the record affords an additional study made by the Santa Fe in 1923 which comes nearer to being constructed upon a sound basis than the others referred to."

Commissioner Porter vigorously dissented from the use of average transportation costs as evidence in determining the lawfulness of segment of traffic moving on class rates. At page 717 he said:

> "The cost evidence was prepared by members of our staff. It does not even purport to reflect the actual or relative costs of transporting class-rate traffic in the different rate territories. The territorial cost comparisons were based on the cost of furnishing a given amount of transportation service in certain territories selected by our cost section on traffic handled in different types of equipment, such as box, gondola, tank, stock, flat, or refrigerator cars. Class-rate traffic is not transported exclusively in any type of equipment, and although a substantial quantity is moved in box-

cars, the volume of class-rate traffic transported in boxcars is much less than the volume of traffic trans-
[fol. 632] ported in that type of equipment at exception or commodity rates. *It is thus clear that the cost evidence does not afford a basis for a finding of the actual or relative costs of class-rate traffic in the various territories.*" (Italics added.)

At page 718 of the report he stated:

"Either this Commission has been grossly misinformed by dozens of sworn witnesses in the last half century, or this cost study is practically worthless for the purpose of fixing rates. I do not mean to say that it is not the best that can be produced at this stage of the science of cost-finding, but I do mean to say that it is so full of estimates and assumptions that even if it purported to show the cost of transporting class-rate traffic, which it does not, it would be unsafe to base the prescription of class rates or class-rate relations upon it."

Commissioner Barnard, in a separate dissenting opinion, stated as follows at page 728:

"These studies attempt to arrive at a territorial comparison of average cost of all traffic and for traffic transported in different types of cars, i. e., box, gondola, and hopper, stock, flat, tank and refrigerator cars, and do not purport to show the costs of transporting class-rate traffic in any territory. The studies make no allowance for the difference in the consist of traffic in the different territories. If accepted at face value, they do not prove, nor were they intended to show the average cost of transporting class-rate traffic in any territory."

(b) Even if average transportation costs could be considered indicative of the cost of handling traffic moving on class rates the average cost studies contained in the record in Docket No. 28300 cannot be accepted as even approximately indicating the average cost of handling all kinds of traffic. These cost studies are complicated and it would unnecessarily lengthen this affidavit and burden the court
[fol. 633] were I to undertake to indicate in detail the

errors underlying the cost studies presented by the Commission's witness Dr. Edwards. For the purpose of this affidavit it will suffice to set forth the following remarks of Commissioner Porter made at page 717, which are supported by the evidence of record, and which I concur and adopt:

> "The report does not show, except in nebulous fashion, that the cost figures represent apportionment of totals, based on estimates; that they involve many assumptions and acts of judgment; and are not computations from direct, original cost figures for particular movements. These, however, are the facts. It omits evidence showing that 59 out of 117 items of basic data used in the studies were estimated, and that 458 out of 500 sequences were wholly or partly estimated. It fails to disclose clearly that when making the studies it was assumed that the consist of the traffic is the same in the different territories, when the fact is, as I have pointed out, that the traffic consist differs widely in the respective territories. The result is that theoretical costs are produced, based upon assumptions which are not facts, and upon comparisons of unlike things."

(c) If the cost studies prove anything, they prove it as well as to the transportation of raw materials and low-grade freight as with regard to the transportation of class-rate traffic. Thus they do not justify a conclusion that the class rates are unlawful because not uniform or that the class rates for transportation within Official Territory should be increased, so long as the railroads are permitted to charge higher rates for the transportation of low-grade freight and raw materials in Official Territory than in the South.

[fol. 634] (d) Even if computations of average costs could be accepted as proof of the cost of transporting freight on which class rates are charged, the majority was in error in finding that the cost computations in this proceeding indicate that the transportation costs in Official Territory are approximately equal to those in the South. This is so, first, because in computing averages for Official Territory, there were excluded statistics for the so-called Pocahontas Lines. Had such statistics been included, they would have

produced a lower average for Official Territory than for the South. The Pocahontas Lines are Official Territory railroads, their lines traverse that Territory, they charge Official Territory rates and their class rates would be increased by the Commission's orders. Second, the average figures for the South were the result in part of including statistics for transportation actually performed in Official Territory by railroads grouped with the South for accounting and reporting purposes. All of this more fully appears from the affidavit of Mr. Charles E. Bell to be submitted herewith.

(e) In regard to the comparative transportation costs in the Official Territory on the one hand and Western Territory on the other, the Commission found (p. 591):

> "Comparisons based on the year 1939 and the period 1930-39 show the over-all cost of rendering transpor- [fol. 635] tation service in the western territory to be between 5 and 10 per cent higher than in the East, excluding the Pocahontas territory. If the year 1941 were used, this difference would be reduced to 5 per cent or less. A comparison based on the inclusion of the Pocahontas territory with the eastern roads for the period 1930-39 shows a difference of 18 per cent. Based on the year 1939 the difference shrinks to approximately 15 per cent. Based on the year 1941 it would be reduced to something in the neighborhood of 10 per cent."

In the light of this finding, even if the cost computations were proof of the cost of transporting class-rate traffic, they do not constitute evidence that the class rates in Official Territory are unlawful because not equal to those in Western Territory.

12. On page 696, the majority of the Commission express the view that not only considerations of cost of service but also "consists of the traffic, distribution of the rate burden" justify the conclusion that the differences in levels of the class rates make them unlawful. On the contrary, the evidence shows that both in volume and in character the traffic transported by the railroads in Official Territory is greatly different from that transported by the carriers in Southern and Western territories; that the

carriers in the several territories have long followed entirely different schemes for distributing total transportation costs among the articles of commerce transported; that there are wide differences in the levels of the charges for transporting low-grade freight and raw materials as between Official and Southern territories, and that therefore the fact that the class rates are likewise on different levels in the different territories does not render them unlawful.

[fol. 636] 13. On pages 613 and 614 of the majority report, reference is made to the rates of return of the railroads in the several territories, and on page 705 the majority finds, on the basis of the figures as to rates of return, that "the revenue needs of the carriers in Official Territory with respect to their class rate traffic are greater than is the case as to the class rate traffic of the carriers in the other territories described." In my opinion, there is no evidence in the record which supports this finding. There is no proof that the rate of return of the carriers in Official Territory is due to the level of their class rates or that their average rate of return would be increased if the class rates were increased.

14. On pages 695, 696 and elsewhere in the majority report, it is stated that the differences in the levels of the class rates impede the free movement of manufactured products from points in Southern and Western territories, "reacts to the disadvantage of manufacturers in the other territories, and to the advantage of those in Official Territory" and "tends to restrict the growth and expansion of the manufacturers in the other territories, and, to some extent, to prevent the establishment of new manufacturing plants in those territories". The findings are the basis of the majority's ultimate finding No. 3 (P. 701) that the relations between the class rates presently applying from Southern, Southwestern and Western Trunk Line Territories to Official and Illinois territories on the one hand, and the intraterritory class rates applicable between Official and Intra-Illinois Territory on the other, result in undue and unreasonable preference and advantage to Official and Illinois Territories as a whole and to the shippers and receivers of freight located therein, and undue and unreasonable prejudice and disadvantage to Southwestern and [fol. 637] Western Trunk Line Territories as a whole and

the shippers and receivers of freight located therein, in violation of Section 3 (1) of the Act.

In my opinion, there is no substantial evidence in the record before the Commission to support these findings, and these findings are, indeed, without support in and contrary to preliminary findings of the majority itself as to the nature of the evidence on this point.

15. The Southern interests presented only nine witnesses representing individual business organizations and only three of these nine represented shippers whose products moved on class rates in issue in Docket No. 28300. These witnesses presented no testimony that would indicate that the existing class rates subject them to injury. (See pp. 615, 619 of the Majority Report.) In addition, testimony was offered by the Secretary and Manager of the Atlanta Freight Bureau in respect to 14 groups of commodities. It appears, however, that only six of these moved on class rates and there is no showing in respect to these six commodities that the shippers thereof are in competition with shippers in Official Territory, that they are subjected to injury because of the present rates, or that they had previously ever complained to the representatives against the present class rates (p. 618). One other witness for the Nashville Freight Bureau criticized the rates on two commodities, but whether the rates moved on class rates or the Southern shippers were in competition with Northern shippers, or are subject to injury because of the present rates is not indicated by the Commission's reports (pp. 618-619). The Commission's findings based on this testimony are set out at pages 12 to 19 of the petition. In [fol. 638] my opinion neither these findings nor the evidence constitute substantial or indeed any support for a conclusion that the differences in the levels of the class rates have impeded the movement of freight, or constituted a disadvantage to manufacturers in the South or caused prejudice or injury to the South. Opposed to this scanty testimony were the positions taken by several organizations representing a large cross section of shippers in Southern Territory. The position of these organizations is summarized by the Commission as follows at p. 561 of its report:

> "Representatives of certain southern industrial interests and shippers located in the southern States oppose a general revision of the southern class-rate

structure or of the class rates between southern and official territories. Their position is that the present class rates considered as a whole are lawful and are well suited to southern economy, do not retard the development of manufacturing in the South, and that mile-for-mile uniformity of southern class rates with those in official territory would so affect the revenues of southern carriers as to require an upward revision of commodity rates within and from the South, with disastrous effects upon southern industry. Certain southern interests on oral argument strongly opposed any action herein which might result in increases in the levels of exception or commodity rates within or to and from southern territory.

The Southern States Industrial Council, a voluntary, nonprofit organization, composed of the major manufacturing interests in 13 southern States, expressed the view that rate inequalities should be adjusted through recognized channels without involving the entire basic rate structure of the country. It does not favor widespread changes that will affect adversely the South's present industrial economy, the growth and development of which is said to have been fostered by the basic commodity rate structure in southern territory.

On argument, the Southeast Shippers' Conference, a voluntary organization of manufacturers, shippers, commercial organizations, and receivers of freight located in the South, stated that the prevailing system in the South of distributing the prices of transportation among articles of commerce is responsive to the South's development and has proved generally satisfactory. It opposes the uniformity sought.

[fol. 639] The New Orleans Joint Traffic Bureau on argument expressed the opposition of its members to uniformity of class rates."

As regards Western Territory, the Commission's report indicates that only three commercial witnesses speaking for individual business establishments testified in the proceedings before the Commission and as the majority found (p. 673) two of the shippers neither complained that the rate adjustment had discouraged or disbarred their enterprises, nor did they apparently complain of the rates in any other

respects. The other shipper, as found by the majority, uses class rates "only to a very limited degree."

Commissioner Porter in his dissent said on this subject (p. 722):

> "An unbiased consideration of the foregoing data, together with others of similar import upon this record, can lead to but one conclusion, namely, that the class-rate adjustment here before us has had no appreciable effect, one way or the other, upon the industrial or economic development of the South or the West, and that not a single shipper, nor any particular class of shippers, nor any particular territory, has suffered injury by reason of that adjustment. Accordingly, I can find in this record no adequate support for the majority findings of undue prejudice and preference".

And Commissioner Barnard said (p. 728):

> "I am unable to find in this record sufficient evidence to support the claim of the Southern Governors' Conference that the class rate structures within the South and between the South and official territory have restricted the industrial growth of the South and have favored and stimulated the growth of industry in the North. On the contrary, the evidence shows that the South has progressed industrially during the last decade much more rapidly than any other section of the country. Furthermore, the evidence fails to convince me that the products of the South cannot compete with the products of official territory in that territory, but for the purpose of the argument, let it be assumed that the contrary is true. Nevertheless, if true, it does [fol. 640] not come about because of the difference in the class rates but is due to other causes which have no connection whatever with these rates."

In my opinion these expressions should indicate to the court serious doubt as to the sufficiency of the evidence to support the Commission's findings on this important point.

16. Therefore, it is my opinion that as to the major preliminary findings or assumptions upon which the majority's ultimate conclusion is predicated, there is a complete lack of substantial evidence to support them.

17. In reaching its basic conclusion that the class rates should be made uniform in all territories, it is my opinion that the majority of the Commission proceeded upon an erroneous view of the effect of Section 3 of the Interstate Commerce Act as amended and of Section 5 (b) of the Transportation Act, 1940. The majority appear to be of the view that these provisions require that rates shall be uniform in all territories. It is my opinion that the majority has misconceived the effect of these provisions and the Commission's powers thereunder.

18. Even if the Commission was justified in concluding that a uniform level of class rates should be established by the railroads for any of the reasons apparently relied upon by the Commission, it is my opinion that this does not and would not support the Commission's orders requiring a ten per cent increase in the class rates for transportation within Official Territory. I base this opinion upon the following considerations, among others:

(a) The Commission's orders are, in effect, an exercise by it of its power to prescribe minimum reasonable rates. [fol. 641] It has been held that the minimum rate power must be used sparingly and only when the preponderance of the evidence shows that existing rates do not provide adequate compensation for the transportation to which they apply and are not compensatory and, therefore, less than minimum reasonable rates, or that they seriously threaten a rate war and a consequent breakdown of the rate structure and an impairment of the revenues of the railroads, or that they are so inadequate that they cast a burden upon other freight to pay higher charges than would be warranted for the transportation of such other freight.

(b) There is no evidence in the record sufficient to support a finding that the existing class rates charged by the railroads in Official Territory do not provide adequate and reasonable compensation to the railroads for such transportation.

(c) There is no evidence that the existing class rates in Official Territory threaten a rate war or a general breakdown of the rates and the revenues of the railroads in Official Territory or that they throw a burden upon other freight.

(d) Even if the relative rates of return of the carriers in the several territories afforded an indication that the railroads in Official Territory require additional revenue, [fol. 642] there is no evidence that the rates of return are the result of the levels of the class rates or that the rate of return of the railroads in Official Territory would be increased by an increase in the class rates.

(e) There is no evidence that the class rate traffic in Official Territory will freely move at such rates if they are increased ten per cent.

(f) The requirement that the class rates in Official Territory be increased ten per cent, in my opinion, is not supported by the finding of undue prejudice and preference (even if the latter finding were supported by the evidence) in that it is well settled that the law requires that railroads be given an alternative as to the method of removing undue prejudice and preference and the Commission would be authorized to direct removal by an increase in the class rates in Official Territory only if there were a finding and evidence to support a finding that the existing rates are less than minimum reasonable rates, *Texas and Pac. Ry. Co.* v. *U. S.*, 289 U. S., 627, 650.

(g) As to a great deal of traffic there is no justification whatever for a finding that the differences in the levels of the class rates cause undue prejudice and preference because of the fact that the freight in Official Territory on which the railroads charge class rates, which would be in- [fol. 643] creased, is to a considerable extent in competition with freight shipped from the South and West, on which the railroads charge exception or commodity rates and do not charge class rates at all.

(h) The majority finds (pages 698-699) that the class rates in Southern, Southwestern, and Western trunk-line territories do not serve the purposes for which they were designed, as indicated by the fact that only a small proportion of traffic moves at class rates as compared with the volume of traffic moving at commodity and exception rates. By implication, the Commission finds that the class rates in Official Territory do serve the purpose for which they were intended and this is shown by the evidence indicating that a greater proportion of the total traffic in Official Territory moves at the class rates than is the case in other terri-

tories. It is arbitrary, inconsistent and without support in the evidence for the Commission to order that the class rates in Official Territory be increased, with the object of inducing traffic to move in greater volume at class rates in Southern and Western territories.

(i) The class rates in Official Territory were prescribed by the Interstate Commerce Commission as maximum reasonable rates in Eastern Class Rate Investigation, 164 I. C. C. 314, decided in 1930. There is no evidence in the [fol. 644] record to support a finding that conditions have so changed since then that class rates thus prescribed as maximum reasonable rates have now become less than minimum reasonable rates, and the Commission has made no finding of such facts. For this further reason, therefore, it is my opinion that the orders so far as they require an increase in the class rates in Official Territory are without support in the evidence and findings and are arbitrary and invalid.

(j) In so far as the Commission has sought to justify its orders on the ground of removing undue prejudice or preference, or removing supposed impediments to the free movement of goods from the South and West, the orders are entirely without support in either the evidence or the Commission's findings to the extent that they will require a ten per cent increase in the freight charges on the large volume of class rate freight transported entirely within Official Territory which is not competitive with goods shipped from the South or West.

(k) In my opinion, the conclusion of the majority that the class rates in Official Territory should be increased ten per cent is the result of the majority's view that the class rates should be made uniform throughout the country east of the Rocky Mountains and of its further view, not expressed in its reports but supported by the evidence of record, that to accomplish uniformity at the level of the present class rates in Official Territory would unduly deplete the revenues of the Southern and Western railroads. Therefore, the [fol. 645] Commission's orders would have the effect of requiring shippers and receivers of freight shipped entirely within Official Territory to pay higher freight charges than the railroads in that territory have demanded, than the evidence shows are necessary to provide adequate compen-

sation for the transportation of class rate traffic, in order to preserve the revenues of the Western and Southern railroads. In my opinion, the law confers no authority upon the Commission to order the rates in Official Territory to be increased under these circumstances and for such a purpose.

(l) In their dissenting opinions, Commissioners Porter and Barnard categorically state that there is no evidence to support a minimum rate order requiring that the rates within Official Territory be increased ten per cent and that there is no evidence to support the finding of the majority that the existing class rates prejudice the South and the West or the shippers located therein, and prefer Official Territory and the shippers located therein, in violation of Section 3(1) of the Act. Commissioner Patterson, in his separate opinion dissenting in part, is in agreement with the dissents of Commissioners Porter and Barnard that the evidence does not afford a basis for the finding of the majority that the rates in Official Territory should be increased ten per cent. Commissioner Meins of Massachusetts, one of the three State Commissioners sitting on a cooperating [fol. 646] committee on behalf of the interested states, also stated in his dissenting opinion that there is no evidence to support a finding requiring that the rates within Official Territory be increased ten per cent or to support the finding made that the existing rates discriminate against the South and the West and shippers located therein (pp. 706, 707). Commissioner Mahaffie, although concurring with the majority that there should be an ad interim adjustment, stated that he concurred in the main with Commissioner Porter's dissent. The dubious legality of the Commission's orders could not be better illustrated than by the separate opinions of the dissenting Commissioners.

(m) These dissenting opinions of Commissioners who studied the evidence and participated in the Commission's deliberation, in conjunction with the fact that this Court will be called upon to interpret amendments made to the Act by the Transportation Act, 1940, which have heretofore not been considered by the courts, constitute highly persuasive reasons, if they do not absolutely require that the Commission's orders be temporarily enjoined, pending the determination of the plaintiffs' petition for a permanent injunction. This is a point which is discussed in a memo-

randum of law which has been or will be handed to the Court.

[fol. 647] 19. The Commission's orders requiring that rates be made uniform throughout the country east of the Rocky Mountains will, instead of removing discrimination between shippers and receivers of freight, have the effect of discriminating against the Northern states, including New York, and the shippers and communities therein. The evidence of record shows that the rates on many raw materials and low-grade products are relatively higher in Official Territory than in the South. As a consequence, under the Commission's orders, while the southern shippers would have the benefit of class rates on an equality with those applicable within the North, the shippers in the latter territory would still have to pay higher rates on the raw materials and low-grade products. This would result in a rate discrimination against plaintiffs and their shippers and communities.

20. In my opinion, the orders of the Commission requiring an interim increase of ten per cent in the class rates of the railroads in Official Territory are invalid and beyond the Commission's authority in that the Commission has power to prescribe and order only just and reasonable rates; on its own findings it cannot, on the present record, prescribe what will be just and reasonable rates for application in connection with a uniform classification; and there is no finding and no evidence that the present rates increased ten per cent will be just and reasonable rates in connection with the existing official classification.

21. Without repeating the allegations of the petition, it is my opinion that the orders of the Commission are invalid and should be enjoined for all the several reasons therein set forth.

[fol. 648] 22. Assuming, as I believe, that there are reasonable grounds for concluding that the Commission's reports and orders in this proceeding may be invalid and on final hearing should be permanently annulled and enjoined, there will be presented to the Court the affidavits of the Governor of the State of New York, of the Commissioner of Commerce of the State of New York, of officials

industrial and trade associations in Official Classification Territory, all to the effect that a ten per cent increase in the class rates for transportation in Official Territory pending final determination, particularly just at this time when reconversion is the vital need of the country, would impose a great financial burden upon industries and cause irreparable injury to industries, citizens and communities in Official Territory.

23. Although enforcement of so much of the Commission's orders as would require a ten per cent reduction in the class rates in the South and West and from these territories to Official Territory would, to some extent, reduce the freight charges of any shippers shipping under the class rates, it is my opinion nevertheless that the denial of the benefit of reduced rates to such shippers pending final determination of this action would be of insignificant consequence to them compared with the serious consequences for shippers and communities in Official Territory of an immediate ten per cent increase in the class rates for transportation within that territory. I base this opinion upon the facts disclosed by the evidence and the Commission's findings in this proceeding that there is a very large volume of [fol. 649] freight transported at class rates within Official Territory which would be subjected to a ten per cent increase in freight rates and a very small volume of freight which would be affected by the ten per cent decreases required by the Commission's orders. This will be dealt with more fully in an affidavit of Mr. Charles E. Bell, to be submitted herewith.

24. Moreover, it is my opinion, based upon my experience, that if the Commission's orders are invalid and should be permanently annulled, the great confusion, disturbance to industries, disruption of prices and uncertainty which would ensue from permitting the orders to be given effect pending final determination would far offset any advantage which would accrue to anyone from allowing the orders to become effective forthwith.

25. Finally, an important fact bearing upon the relative equities of the situation and supporting the plea for an interlocutory injunction in so far as the Commission's orders require an increase in the class rates for transportation

within Official Territory is that throughout the proceed- of other states, and of representatives of industries and ing before the Commission no complaint was made by shipper, state or community that the class rates within Official Territory are unreasonably low and should be increased. It was only certain motor truck interests who sought to have the less carload rates of all railroads increased in order that they themselves might be able to charge higher rates to shippers and competitive business. Moreover, the class rates in Official Territory which would be continued in effect by an interlocutory injunction were prescribed by the Commission as recently as 1930 as maximum reason- [fol. 650] able rates and, in my opinion, no injustice will be done if the railroads continue, pending final determination herein, to charge such rates rather than rates ten per cent higher.

26. In conclusion and in support both of the view that the record does not afford support for the orders of the Commission and that the Court in its discretion should issue an interlocutory injunction as prayed for in the petition, I direct the Court's attention to the fact that the orders require changes in the class rates and an increase in the class rates for transportation within Official Territory to be charged upon all shipments made on and after January 1, 1946 and for the future until further order of the Commission, and that the evidence of record relates entirely to facts and conditions as they existed in 1939 with some adjustments and statistics for 1940 and 1941. In my opinion, the Court may and should take judicial notice of the fact that a world war has intervened, that it is the inevitable consequence of such a colossal event that economic conditions are changed, industry is dislocated, new manufacturing processes and products are developed, and that an equal change, the direction of which cannot be foreseen, is likely to follow the termination of the war and reconversion to peacetime production. It is my opinion that for these reasons the orders of the Commission are invalid because based upon evidence which has become stale and has no relation to the facts as of the present and future when the Commission's orders must operate and that, consequently, great injustice will be done to all parties, states, communities and shippers in all sections of the country from enforce- [fol. 651] ment of the Commission's orders unless and until

further evidence is before the Commission with regard to conditions and facts at the present time and as they are likely to be in the future.

Parker McCollester.

Signed and sworn to before me this 13th day of December, 1945. Raymond J. Martin, Notary Public. Kings County Clk's No. 57, Reg. No. 67-M-6. Bronx County Clk's No. 8, Reg. No. 18-M-6. Queens County Clk's No. 79, Reg. No. 28-M-6. N. Y. County Clk's No. 202, Reg. 125-M-6. Term expires March 30, 1946. (Seal.)

[fol. 652] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT OF H. C. BARRON—Filed December 13, 1945

STATE OF ILLINOIS,
County of Cook, ss:

H. C. Barron, being first duly sworn, deposes and says:

1. I am and since December 1, 1945 have been counsel for the Western Traffic Executive Committee, with offices at 310 Union Station, Chicago, Illinois. The said Western Traffic Executive Committee is a committee of traffic executives of western railroads organized for the purpose of [fol. 653] bringing about an interchange of information between the interested carriers and between the carriers and interested shippers leading to intelligent and well considered changes in rates, rules, regulations and practices; for the purpose of cooperating along the same line with the Interstate Commerce Commission and other public rate regulatory bodies; and for the purpose of collecting and compiling statistical and other data.

2. Since October, 1927 to December 1, 1945, I was General Attorney and Commerce Counsel of The Atchison, Topeka and Santa Fe Railway Company, having under my jurisdiction the handling of litigation pertaining to freight

rates, rules and regulations dealing with state and interstate traffic. I have represented the railroads in many large investigations instituted by the Interstate Commerce Commission, as well as cases before that Commission by formal complaints brought by interested shippers, receivers, localities, etc.

3. I am Chairman of the Western Lines Legal Committee appointed to defend the issues involved in the Commission's investigation in Class Rate Investigation, 1939, Docket No. 28300, wherein the reports and orders complained of in the petition herein were entered. I attended all of the hearings before the Interstate Commerce Commis- [fol. 654] sion, have reviewed the transcript of record, the various briefs filed by parties in interest and personally prepared a petition on behalf of respondents in the western district, dated Chicago, Illinois, July 16, 1945, requesting postponement of the effective date of the Commission's order for reopening, reargument and reconsideration, which petition was denied by the Commission's first supplemental order dated October 30, 1945.

4. From a detailed reading of the Commission's original report and order in *Class Rate Investigation*, 1939, 262 I. C. C. 447, it is clear that the paramount purpose of the investigation was the question of class rates within southern territory and between southern territory and Official Classification territory. The Commission's report setting forth the economic situation in the south, relative levels of rates between the south and the east, the levels of revenues from all freight within the south versus the east, the cost and consist of traffic in the south as compared to the east, and other matters pertaining to the shipping and railroad interests in the south are set forth on 42 pages, pages 592 to 634, inclusive.

[fol. 655] The Commission's recitation of the situation in the territory served by western respondents is meager in the extreme and does not embrace in detail the considerations given by the Commission to the comparative situation in the south versus the east. There were no shippers or shippers' representative who testified at the hearing as to any particular scale of rates, their only concern being a uniform basis of class rates with that applicable in Official territory. As is shown on page 664 of the

Commission's decision, the Southwestern Steering Committee seeks uniformity of class rates, mile for mile, within the southwest and between that area and all other rate territories involved in the proceeding. The specific rate level sought was the so-called "Eastern Scale." At page 665 of the Commission's decision it is stated that strong recitations are made that the economic development of the southwest has been retarded by the present class rate structure and that this alleged condition is one of the principal factors to be taken into consideration in the prescription of reasonable and non-discriminatory rates. Beginning at page 669 [fol. 656] of the Commission's decision the Commission purports to set forth evidence to prove the contentions of the western shipping interests. The testimony as recited by the Commission was by representatives of the Arkansas State Planning Board, the Arkansas Agricultural and Industrial Commission, and a professor of transportation and industry of the University of Texas, who testified with regard to the business of five shippers located in Texas and a comparison of charges that were assessed on the tonnage forwarded by such concerns with rates that would have applied had certain class rates in effect in Official Territory applied. The Commission recognized that the testimony as adduced of record did not indicate whether the commodities discussed by the witness moved on class rates or otherwise. The Commission recognized the fact that only three commercial witnesses speaking for individual establishments in the southwest and Western Trunk Line territory testified in the proceeding, one a manufacturer of coal washing machinery at Pittsburgh, Kansas, and a lamp and stove manufacturer at Wichita, Kansas. The traffic of these two companies, as recited by the Commission, does not [fol. 657] move on class rates and therefore was not involved in the proceeding. The other commercial witness was for a steel company at Denver, Colorado, who, as recited by the Commission, uses class rates only to a very limited extent.

The Commission finds, at page 675 of its report, that the composition of traffic originating in the east and in the west is vastly dissimilar. It also finds at page 673 that "There is a wide difference between the traffic densities of the eastern and western districts."

The Commission recognized at page 680 of its report that western respondents introduced an elaborate statistical

analysis of economic conditions to show there had been no change in conditions since the Commission's prescription of class rates in *Western Trunk Line Class Rates*, 164 I. C. C. 1, decided May 6, 1930, wherein the reasonableness of the class rates applicable throughout Western Trunk Line territory and between that territory and eastern territory were prescribed. The Commission, at page 679, recited the fact that 18,300 pages of testimony and 1,700 exhibits were introduced in the proceeding in *Western Trunk Line Class* [fol. 658] *Rates*. If there had been any substantial change in the economic conditions to, from and within Western Trunk Line territory such facts would have been recited by the Commission.

The western respondents opposed the suggested uniformity of class rates for the following reasons, as shown at page 680 of the Commission's decision in Class Rate Investigation, 1939:

> "1. The proposal does violence to rules of rate making which have been evolved through decades of experience of this Commission, railroads, and industries.
>
> 2. It rests upon false premises.
>
> 3. It evades the facts which must underlie any freight-rate adjustment if that adjustment is to have commercial vitality.
>
> 4. The suggestion presupposes a country compact and homogenous throughout its extent, a national commerce of even flow and character, business methods and practices without conflicting interests, and railroad systems which function under identical circumstances and ownership.
>
> 5. It involves the merging of unlike things, or the transfer of the peculiar conditions of one section to [fol. 659] another section on the fiction that rates need not bear any relation to conditions as they actually exist.
>
> 6. It will not accelerate industrial expansion in the West, but, to the extent that "uniformity" is obtained through rate reductions, will admit manufactured products from eastern plants to the West on lower charges and bring revenue losses to these respondents.

7. Such a class-rate adjustment must necessarily exert both direct and indirect influences upon other types of rates, since charges upon highgrade traffic quickly become standards for measuring other rates, and since uniformity in class rates can serve to incite demands for uniformity in other rates.

8. The present intraterritorial and interterritorial class rates were prescribed by us as just, reasonable, and non-discriminatory under conditions not disturbed by the war, and parties to this proceeding have offered no evidence that such rates have become unjust, unreasonable, or unduly discriminatory by virtue of any pertinent change in conditions. These respondents have reduced many of their charges to levels below the maxima authorized by the publication of classification exceptions or commodity rates, all to the advantage of the public."

While the Commission has recited the reasons advanced by the western respondents nowhere in the report can there be found any recitation of any testimony adduced of record that would in any manner rebut the contentions of western respondents.

[fol. 660] In reaching its determination as to the basis of rates to be prescribed for application to, from and within western territory the Commission has, to a large extent, relied upon the alleged cost study introduced by one of its own representatives, and while the Commission recognized at page 693 of its report that perfection had not been attained by use of the formula used to determine costs the Commission was of the opinion that such cost study possessed sufficient attributes of accuracy to enable it to rely upon them in reaching its conclusion. The infirmities in the cost study are such that neither the Commission nor anyone else could possibly rely upon such a study and come to any definite conclusion as to the cost of handling traffic in any territory. The dissenting opinion of Commissioner Porter is illuminating. He states as follows at page 717 of the report:

"The cost evidence was prepared by members of our staff. It does not even purport to reflect the actual or relative costs of transporting class-rate traffic in the different rate territories. The territorial cost com-

parisons were based on the cost of furnishing a given amount of transportation service in certain territories [fol. 661] selected by our cost section on traffic handled in different types of equipment, such as box, gondola, tank, stock, flat, or refrigerator cars. Class-rate traffic is not transported exclusively in any type of equipment, and although a substantial quantity is moved in boxcars, the volume of class-rate traffic transported in boxcars is much less than the volume of traffic transported in that type of equipment at exception or commodity rates. It is thus clear that the cost evidence does not afford a basis for a finding of the actual or relative costs of class-rate traffic in the various territories.

"The report does not show, except in nebulous fashion, that the cost figures represent apportionment of totals, based on estimates; that they involved many assumptions and acts of judgment; and are not computations from direct, original cost figures for particular movements. These, however, are the facts. It omits evidence showing that 59 out of 117 items of basic data used in the studies were estimated, and that 458 out of 500 sequences were wholly or partly estimated. It fails to disclose clearly that when making the studies it was assumed that the consist of the traffic is the same in the different territories, when the fact is, as I have pointed out, that the traffic consist differs widely in the respective territories. The result is that theoretical costs are produced, based upon assumptions which are not facts and upon comparisons of unlike things."

The Commission in an attempt to justify its decision states at page 696 to the effect that in its opinion class rates as presently in effect tend to restrict the growth and [fol. 662] expansion of manufacturers in the west and to some extent to prevent the establishment of new manufacturing plants. This conclusion is reached by the Commission, notwithstanding there is absolutely no testimony of record to indicate that any manufacturing establishment has been restricted in its growth, nor has any manufacturer failed to locate in the western territory because of the class rate or other rate adjustments. The record is replete with unrefuted testimony that the railroads always

have been and continue to be alert to the necessities of industrializing the western territory and on all occasions when called upon, rates have been established which have enabled manufacturing plants located in the west to distribute their products in competition with manufacturers located in other territories.

The Commission has precribed as a permanent basis of rates for application to, from and within eastern, southern and western territories a mileage scale of rates as set forth in Appendix 10 to its report, page 766. This scale is to be established when a uniform classification has been prepared by all railroads in the United States, subject to [fol. 663] the approval of the Interstate Commerce Commission. In its desire to achieve uniformity as near as possible, the Commission has prescribed an *ad interim* basis of class rates which is indicated to become effective January 1, 1946. The Commission attempts to achieve uniformity as near as possible by increasing the intraterritorial rates in the eastern territory 10 per cent and by reducing the intraterritorial rates in the south and in the west 10 per cent, and by reducing the interterritorial rates between the south, west and the east 10 per cent. The Commission in prescribing the so-called *ad interim* basis is of the opinion that such a basis will bring to a minimum the preference and prejudice which it has found to be unlawful, but only as completely as it is practical to do so prior to the establishment of the permanent basis of class rates. Section 3 (1) of the Act, which the Commission finds is violated by the present class rates, requires that all preference and prejudice be eliminated. Inasmuch as the Commission itself recognizes that the *ad interim* adjustment will not eliminate all preference and prejudice and readily acknowledges that as a fact by its prescription of a different basis to be established per- [fol. 664] manently, western respondents aver that the *ad interim* basis is unlawful in that it does not comply with the admonitions as set forth in Section 3(1) of the Interstate Commerce Act.

5. In the absence of any testimony showing that any person, company, firm, corporation, association, locality, port, port district, gateway, transit point, region, district, territory or any particular description of traffic is subject to prejudice or disadvantage or has been damaged in any respect whatsoever, the Commission's reports and orders based thereon are arbitrary, capricious and unlawful. The

record as made in this proceeding before the Interstate Commerce Commission contains no testimony of an evidentiary nature on behalf of any particular shipping interest to indicate that they have been in any manner damaged by the class rates presently in effect, therefore, the decision of the Interstate Commerce Commission is arbitrary, capricious and unlawful.

The petition on behalf of respondents in the western district, dated at Chicago, Illinois, July 17, 1945, requesting the Commission to postpone the effective date of order, for reopening, reargument and reconsideration of its report, [fol. 665] sets forth in particular the reasons why respondents request should be granted. Such petition points out the erroneous conclusions reached; the lack of evidence to support the Commission's findings; the lack of consideration given to the effect on western railroads in the post war period; that the statistical data adduced of record was for an unprecedented war period which could not reflect economic or transportation conditions in the post war period, as well as other reasons why the Commission's report was arbitrary and unlawful. Such petition as filed with the Interstate Commerce Commission is annexed hereto as Exhibit 1.

Western railroads, who are parties plaintiffs to this proceeding by reason of an order permitting intervention signed at Utica, New York, November 29, 1945, aver that they will be irreparably damaged if the Commission's re- [fol. 666] ports and orders as entered in its Docket No. 28300, are not restrained in their entirety.

Further affiant saith not.

S. R. Barron.

Signed and subscribed to before me this 12th day of December, 1945. Glenn F. Vivian. My commission expires Mar. 16, 1948. (Seal.)

Exhibit - 1

606

BEFORE THE

Interstate Commerce Commission

CLASS RATE INVESTIGATION, 1939. } Docket No. 28300.

PETITION OF RESPONDENTS IN THE WESTERN DISTRICT FOR POSTPONEMENT OF THE EFFECTIVE DATE OF ORDER FOR REOPENING, REARGUMENT AND RECONSIDERATION.

Come now respondents in the western district* and file this their petition for postponement of the effective date of the order as entered herein for reopening, reargument and reconsideration, and in support of said petition your petitioners say that:

The Commission's decision, decided May 15, 1945, involved two proceedings, *i. e.*, Docket No. 28300 and Docket No. 28310, the former docket involving the question of uniformity of class rates throughout that territory in the United States roughly designated as east of the Rocky Mountains.

Under date of June 21, 1945 the Commission was advised by the chairman of the Law Committee, appointed by the western railroads, that the Class I western railroads would undertake the task of preparing a uniform

* Not filed for account of the St. L-SF Railway Company, The Alton Railroad, the Illinois Central Railroad Company or the Wabash Railroad Company.

667 - 672

classification, as required by Docket 28310, with the collaboration of the eastern and southern lines without prejudice to whatever views such respondents may have as to the level of the class rates as prescribed in Docket 28300. It is to the latter decision wherein the Commission has prescribed certain rates during an interim period and thereafter permanent rates that this petition is directed.

Beginning at sheet 258 of the report, under the title of "Nature and Scope of the Evidence", the Commission refers to recent amendatory legislation by the Congress, particularly as to Section 3(1) of the Act which was amended by the addition of the words "region, district, territory" and by reference to the provision designated as Section 5(b) of the amendatory Act of 1940 which provides in part as follows:

> "The Interstate Commerce Commission is authorized and directed to institute an investigation into the rates on manufactured products, agricultural commodities, and raw materials, between points in one classification territory and points in another such territory, and into like rates within any of such territories, maintained by common carriers by rail or water subject to Part I of the Interstate Commerce Act, as amended, for the purpose of determining whether said rates are unjust and unreasonable or unlawful in any other respect in and of themselves or in their relation to each other * * *".

Based on such amendatory legislation and the new provision in Section 5(b) the Commission has apparently disregarded all precedents as to the fixation of rates that

have been the nucleus of the Commission's decision since its inception in 1887, and laboring under a misapprehension of such amendatory legislation and the Amendatory Act of 1940 the Commission has, for the sake of what might be deemed appeasement, dealt a blow to the western railroads, the effect of which is difficult at this writing to determine. However, we do know that if the decision is carried to its ultimate conclusion, it cannot help but be a decisive factor in rendering these western railroads a body blow which will make them incapable of maintaining that kind of a national transportation system as intended by the Congress in the National Transportation Act of September 18, 1940.

The Record Does Not Support a Finding of a Violation of Section 3 (1) of the Act.

We will first deal with the question of discrimination as found by the Commission to exist.

This investigation into the class rates and of the classification was heard together and all of the proponents of uniformity in rates and ratings obviously were prayerful and hopeful that if successful the net result would be lower total freight charges from to and within the territories represented by such proponents.

There appeared to be no serious objection on the part of proponents or respondents to the establishment of uniform class ratings.

Respondents realize the magnitude of perfecting such uniformity which involves hundreds of thousands of sep-

arate ratings, and the fact that the classifications in the separate territories have grown through the years so as to reflect more or less the particular necessities of the territories where the different classifications are applicable.

The Commission has found that the present classifications are unlawful and all of the railroads have indicated, as heretofore stated, a willingness to promptly undertake the task of creating a uniform classification. While the task is monumental it must be realized that great strides have been accomplished over the years by the adoption of uniform rules, the establishment of many uniform ratings and the elimination of many separate classifications, typical of which were those heretofore applicable intrastate within the several states.

Without detracting or in any way qualifying our willingness to cooperate with the other jurisdictions in effecting a uniform classification it is the opinion of experienced railroad men and classification experts, supported by the apparent lack of interest on the part of many shippers, that the advantages which proponents of uniformity of classification ratings hope for are illusory and we think it fair to anticipate that the problem of the commercial traffic man, as well as for the railroads, will be little changed after unification of the classification has become an accomplished fact.

The Commission is of the opinion that "a satisfactory degree of classification uniformity cannot be attained with-

out a closer alignment of the basic class-rate structure." (269.)

The Commission finds that the class rates within Official, Illinois, Southern, Southwestern and Western Trunk Line territories and interterritorially between said territories are unjust and unreasonable in violation of Section 1(4) and (5)(a) of the Act. (Sheet 270.) From such findings we assume that it is the conclusion of the Commission that the class rates in Official and Illinois territories are unreasonably low as the report contemplates a substantial increase in such class rates for the interim as well as for the permanent basis. The interim rates are increased in Official territory 10 per cent; the rates in other territories, *i. e.*, Southern and Western, and interterritorially reduced 10 per cent pending construction and adoption of the new uniform classification and the establishment of the permanent class scales.

The mere finding that certain class rates in Southern, Southwestern and Western Trunk Line territories are too high and that rates within Official and Illinois territories are too low would not necessarily bring about the uniformity in rate levels sought by proponents of uniformity and here required by the Commission. The Commission finds that the *ad interim* adjustment "will have the effect of bringing to the minimum the preferences and prejudices which we have found to be unlawful, as completely as it is practicable now to eliminate such violations." (Sheet 272.)

It is the opinion of the Commission that the ultimate rates, as contemplated by the decision, will go farther to wipe out all preferences and prejudices for the reason that the same rates and rating will apply for the movement of any shipment moving on class rates between any points within the United States east of the Rocky Mountains.

While the Commission makes a finding of unreasonableness under Section 1 of the Act this finding and an order based thereon obviously would not accomplish the results desired by the Commission, this because under the Act prescription of reasonable rates fixes only maximum and/or minimum levels and leaves to respondents freedom to publish rates within the recognized zone of reasonableness which may be found necessary to move certain traffic and to meet competitive agencies and conditions. It has, therefore, been recognized by the Commission that in order to accomplish the desired purpose of uniform or "strait jacket" class rates throughout the vast area of the United States east of the Rocky Mountains the Commission had to make a finding of undue prejudice or preference under Section 3(1) of the Act.

It is to the Commission's discussion of alleged violation of Section 3(1) of the Act and the findings and conclusions with respect thereto that we here direct the Commission's attention.

The importance that the Commission places on this feature of the proceeding is made clear by an examination

of the "general conclusions and ultimate findings," beginning at Sheet 258 of the mimeographed report, extending to Sheet 271, and the further reference to the subject beginning at Sheet 272 wherein in Part 3 of the report the Commission discusses the "*ad interim* class rate revision."

The Commission was forced to engage in an elaborate effort to read into the Act, as amended, the granting of new powers to eliminate alleged discriminations which has led respondents directly to the conclusion that the Commission would here find that the maintenance of higher class rates within Western Trunk Line territory and Southwestern territory than those maintained within Official territory resulted in prejudice to Western Trunk Line and Southwestern territories and shippers and receivers of freight located therein and preferential to Official territory and shippers and receivers of freight located therein. At Sheet 261 the Commission states:

> "By the amendment to the substantive anti-discrimination provisions of Section 3(1) all discriminations in the form of undue or unreasonable preferences or advantage, or undue or unreasonable prejudice or disadvantage, as between regions, districts or territories, viewed *as separate entities*, were brought directly within the purview of the Act along with all the other inhibitions previously included." (Emphasis supplied.)

The extent of the ultimate findings of the Commission with reference to prejudice and preference is not clear but if we correctly understand the report it is the opinion

of the majority that a mere difference in rate levels constitutes a discrimination against a territory and the shipping public located therein and that by the amendment of Section 3(1) of the Act as contained in the Transportation Act of 1940, as hereinbefore noted, the Commission is empowered and directed to remove such discrimination without regard to the responsibilities of the carriers for the existence of such differences in rates and with no obligation on the part of the Commission to accord the carriers operating in the various territories some alternative method of removing the alleged violation. Based on this assumption of the decision of the majority we submit that the Commission has wholly misconceived its powers under the Act. The amendments of 1940 to the Act have not relieved the Commission from its obligation to determine issues on the evidence and support its orders by essential and appropriate findings.

The Commission seems to be impressed, as indicated by the elaborate discussion of the meaning of the word "territory" and the consequences resulting from the addition of this word to Section 3(1) of the Act as enacted by the Congress as an amendment by the Transportation Act of 1940. The Commission, at Sheet 259, poses this query "Have these amendments to the Act added any new inhibitions against discrimination or enlarged the power of the Commission over this subject?" The record as made in this proceeding can be searched in vain for any testimony of an evidentiary nature that shippers or receivers within Western Trunk Line, Southwestern or Southern

territories to Official or Illinois territories were damaged in any manner whatsoever by the alleged differences in the class rates applicable interterritorially on the one hand and those applicable within Official and Illinois territories on the other hand. Had there been evidence of this character there would have been no purpose in the Commission's involved and strained discussion of the meaning of the word "territory" and the effect on the powers of the Commission, if any, resulting from the amendment of 1940. If there had been evidence of injury or damage chargeable to some wrong of the carriers, appropriate reference to such facts would have been all that was necessary to support the finding of prejudice and preference. In the absence of such evidence the Commission is constrained to interpreting the amendment of 1940 as the adoption of a new and wholly foreign transportation policy empowering the Commission to prescribe new rates, without evidence, that the existing rates are unlawful and that no longer does the law recognize the time-honored principle that the carrier or carriers charged with a wrong cannot be penalized unless it or they are responsible for the wrong and has within its power effective means of eliminating such wrong.

The Commission at Sheet 270 finds:

> "That the relation between the interterritorial class rates applicable from southern, southwestern, and western trunk-line territories to official and Illinois territories, on the one hand, and the intraterritorial class rates applicable within official and Illinois territories, on the other hand, makes, gives, or causes, and

for the future will make, give, or cause, undue and unreasonable preference and advantage to official and Illinois territories as a whole and the shippers and receivers of freight located therein, and subjects and for the future will subject, southern, southwestern, and western trunk-line territories as a whole and the shippers and receivers of freight located therein to undue and unreasonable prejudice and disadvantage, in violation of section 3(1) of the act."

As has been heretofore pointed out there is no evidence of record as to injury or damage to shippers within Southern, Southwestern or Western Trunk Line territories and in the absence of such evidence it is inconceivable that the Commission should or could assume damage or injury to the territories or the shippers and receivers therein.

The findings of the Commission are simply recitals in the language of the statute and cannot be regarded as sufficient to support a nation-wide order for the elimination of alleged preference and prejudice. *Florida* v. *United States*, 282 U. S. 194, 213.

As this proceeding involves an investigation of class rates over a wide area and within and between various rate territories the Commission apparently is of the opinion that ordinary principles governing the determination of lawful rates could and should appropriately be ignored (Sheet 258). Without evidence that particular shippers, producers and manufacturers located within Southern, Southwestern and Western Trunk Line territories

were in competition with shippers, producers and manufacturers in Official and Illinois territories the Commission enters its broad findings that the relationship between all of the interterritorial class rates from Southern, Southwestern and Western Trunk Line territories to Official and Illinois territories and all of the class rates within Official and Illinois territories are prejudicial to Southern, Southwestern and Western Trunk Line territories and shippers and receivers therein, and preferential of Official and Illinois territories and shippers and receivers located therein. What the Commission did have before it, and apparently the sole reliance for its finding of prejudice and preference, was the fact that the interterritorial rates, as prescribed by the Commission, were on a different level in Southern, Southwestern and Western Trunk Line territories than those within Official and Illinois territories, the latter being also prescribed by the Commission.

A difference in the class rate levels in the various territories standing alone is not sufficient to support a finding that preference and prejudice exist.

The latest expression of the United States Supreme Court dealing with the Commission's power to remove preference and prejudice is found in the opinion in *State of North Carolina* v. *United States of America*, dated June 11, 1945. That case involved the Commission's order requiring an increase in the passenger fares applicable intrastate within North Carolina on a finding by this Commission that the lower intrastate fares within North Carolina

resulted in undue and unreasonable disadvantage and prejudice to interstate passengers. The Court said:

> " • • • the finding that interstate passengers paid higher fares than intrastate passengers for the same facilities is an inadequate support for nullifying state rates on the ground that they constitute unjust discrimination against interstate passengers."

In condemning the lack of appropriate findings the Court used language which is particularly appropriate in testing the legality of the Commission's findings and order in the instant proceeding, the Court stating:

> "In effect, the Commission's holding was, and its argument is here, that Section 13(4) automatically requires complete uniformity in intra-state and inter-state rates. That argument is in short that under our national transportation system interstate travelers and intrastate travelers use the same trains; for a state to fix a lower intra-state rate than the inter-state rate is therefore an undue advantage to the intra-state passengers and an unfair discrimination against the inter-state passengers. If Congress intended to permit such an over-simplified form of proof to establish 'unjust discrimination', then its requirement of a 'full hearing' was mere surplusage. In fact, it need have provided for no hearing at all since it could have easily stated in its legislation that intra-state rates shall never be lower than interstate rates. The argument of the Commission in this regard runs counter to the language of Section 13(4), and would call for a declaration by us that Congress intended by this section to reverse the entire transportation history of the nation. The clause about 'persons' and 'localities' is as the legislative history shows, a practical enactment into law of a decision of this Court in the

'*Shreveport*' case. *Houston and Texas Ry. Co.* v. *United States*, 234 U. S. 342. In the '*Shreveport*' case the Commission found from evidence that certain Texas intra-state rates to Texas points were far below the inter-state rates charged to carry the same types of freight from Shreveport, Louisiana. The distances and conditions of both transportations were found to be substantially the same. The Court sustained the Commission's conclusion that the Texas intra-state rates constituted an unfair discrimination against Shreveport and persons doing business there. The Commission's order was not statewide, but only required removal of the discrimination against the particular localities and business groups affected by the discrimination."

The language of the Court could be paraphrased and would apply directly to the findings and order in the instant proceeding.

The Commission labors the point that Congress intended more uniformity in rates as between the various territories and since that objective is sought concludes that common rules of evidence, procedure and practice that have been followed since the inception of the Commission in 1887 can be ignored.

These respondents submit that the substitution of arbitrary action in lieu of the determination of issues from the evidence of record after a full and fair hearing does not represent progress in the art of regulation.

We submit that on the record as made in this proceeding there is no warrant for a finding of preference and prejudice and, therefore, the Commission's order lacks the sup-

port of essential findings based on facts and should be vacated.

The Commission's Analysis of "Consist of Traffic and Distribution of General Rate Burden" Is Strained and Unwarranted and Not Supported by the Record.

Beginning at Sheet 264 the Commission sets forth respondents' contentions against a uniform level, dealing particularly with the consist of traffic in the several territories. The testimony of respondents was to the effect that the consist of traffic, particularly in Southern, Southwestern and Western Trunk Line territories as compared to Official territory, was so substantially dissimilar and variant that separate scales of rates with different distributions of the "general rate burden" as between commodities and classes of traffic must prevail. The Commission has not set forth the contentions of any respondent in detail but finds at Sheet 264 that:

> "Furthermore, a large and increasing volume of traffic flows across territorial boundaries and thus becomes common to two or more territories. When analyzed in this light the differences that exist in the consists of traffic in these respective territories are not so substantial or of such character as to warrant the present differences in class rates."

The ultimate findings of the Commission as to the interim basis as well as the permanent basis warrant the assumption, on the part of respondents, that the Commission is of the opinion that the consist of traffic in the various territories is not so dissimilar as to warrant any

difference in the rate levels. Necessarily such a conclusion casts aside, for the sake of uniformity, every consideration heretofore given by the Commission in its fixation of reasonable and otherwise lawful rates within the vast territories and disregards entirely the fact that Official territory is primarily a manufacturing area, whereas the west is primarily agricultural.

It may be that by careful searching a commodity will be found that originates in the east which approximately counterbalances for that territory the movement of phosphate rock, referred to by the Commission, as moving in the south or that some commodity may be found that originates and moves in the west which approximately counterbalances a particular commodity moving in the east but the searching out and finding of such single items proves nothing. The test is to be found in the collective traffic of one territory versus another. Examination of this traffic discloses the argument contained in the report to be based on pure theory advanced for the first time in the Commission's report, and to be as remote from the proved realities of the situation as most abstract discussions are likely to be. The evidence of record establishes the unrefuted fact that the collective traffic of the east is of such composition as to afford western railroads no such compensating balance with the east as the language of the report as quoted might lead one to believe. Facts, as respectfully submitted, are not expunged or annulled by the process followed by the report and of the reasonings around them.

Again referring to the last paragraph on Sheet 264, we respectfully submit that such reasoning is pure abstract theory which is not supported by the evidence and is actually contrary thereto. Such argument as presented by the Commission leads to a state of counter-balance perfection which is refuted by the following facts:

Western district railroads in 1941 operated an average of 130,417 miles of railroad in freight service. This mileage represents 58.02 per cent of the 224,762 miles of railroad operated in the United States, excluding the Pocahontas region, but with that percentage of mileage the western railroads originated only 37.08 per cent of the total tons of carload traffic originated in the United States, excluding the Pocahontas region. The eastern carriers operated 56,488 miles, or 25.13 per cent of the total railroad mileage in the United States yet they originated 47.41 per cent of the total carload traffic in the United States. The wide disparity between the western and eastern figures is at least indicative of widely differing volumes of traffic as well as dissimilar rate and traffic problems. Such figures are persuasive that transportation conditions in the two districts are not interchangeable and that what is proper for one is not necessarily proper for the other as a fixed and definite rule.

The contrast becomes sharper when the composition of traffic originated in the two districts is analyzed. In 1941 the Class I railroads of the western district originated 68,447,778 tons of products of agriculture. This was 68.82

per cent of the total of 99,461,413 tons of agricultural products originated in the United States. Carriers in the eastern district originated only 20,771,864 tons or but 20.88 per cent of the total agricultural products originating in the United States. The enormous volume of agricultural products originating in the western district constituted but 6.33 per cent of the total of all carload traffic originating in the United States.

On the other hand considering manufacturers and miscellaneous, which group has the nearest approach to the rates directly involved in this proceeding, the western district originated but 92,140,881 tons or but 28.06 per cent of the total of 328,300,601 tons originating in the United States. The eastern carriers originated 199,140,599 tons or 60.66 per cent of the total manufactures and miscellaneous commodities originating in the United States.

When the western district railroads' 68.82 per cent of the total products of agriculture is matched against the eastern lines' 60.66 per cent of the total of manufactures and miscellaneous striking contrasts appear. Although the eastern lines' manufactures and miscellaneous products represent a lesser percentage by more than eight percentage points than the western lines' agricultural percentage, the eastern lines' share of manufactures and miscellaneous products is almost three times the tonnage which the western district railroads originated in their 68.82 per cent of agricultural products originated.

These contrasts are significant in another way. Manufactures and miscellaneous products as a group are properly accorded higher freight rates than are agricultural products, the rates on the latter having been fixed at as low a basis as possible as a result of the Hoch-Smith Resolution dated June 30, 1925, which directed the Commission to make a thorough investigation as to

> "the rate structure of common carrier subject to the Interstate Commerce Act, in order to determine to what extent and in what manner existing rates and charges may be unjust, unreasonable, unjustly discriminatory, or unduly preferential, thereby imposing undue burdens, or giving undue advantage as between the various localities and parts of the country, the various classes of traffic, and the various classes and kinds of commodities, and to make in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist."

The Commission was further admonished by the Hoch-Smith Resolution that:

> "In view of the existing depression in agriculture, the Commission is hereby directed to effect with the least practical delay such lawful changes in the rate structure of the country as will promote the freedom of movement by common carriers of the products of agriculture affected by that depression, including livestock, at the lowest possible lawful rates compatible with the maintenance of adequate transportation service: * * *"

The eastern railroads' preponderance of that high-grade traffic represents, therefore, a greater source of revenue

to them than do the products of agriculture to the western carriers. In fact, the Hoch-Smith Resolution has imposed, its principal impact upon the western district railroads, by reason of the prescription, at the hands of the Commission, of the lowest possible lawful rates for the transportation of products of agriculture, including livestock.

If there were no other factors the figures quoted above would, themselves, not only explain but render inevitable a dissimilar distribution of freight charges in and between the two districts in the interest of their economy and the preservation of their transportation systems.

As to animals and products, also subject to the Hoch-Smith Resolution, the western district carriers originated 10,448,824 tons or 63.03 per cent of the total of 16,577,495 tons originated by railroads in the United States. The eastern railroads originated but 4,726,540 tons or 28.51 per cent of the total originated within the United States. While the western carriers' percentage of the total tons of animals and products appears high the total tonnage represented was less than 1 per cent of the total tons of carload traffic originated in the United States.

The rates on animals were fixed by the Commission in *Livestock Western District Rates*, 176 I. C. C. 1, wherein at page 83 the Commission's prescription was based on the tenet that livestock:

> "* * * is a commodity which from its nature cannot be expected to do more than 'pay its own way'; that is, it cannot sustain a rate level which will produce more than the cost of rendering the service plus a minimum of profit, * * *"

690

Rates prescribed under such conditions bore most heavily upon the railroads operating in the western district because of their large volume of livestock tonnage originated and transported.

In the year 1941 the western district roads originated 41,059,987 tons of products of forest. This was 58.73 per cent of the total of that group of commodities originated in the United States. As high as this percentage appears the tonnage is but 3.80 per cent of the total tons of all carload freight originated in the United States for that year. Contrast these figures with 5,253,644 tons originated in the east representing but 7.52 per cent for the total United States and but 0.49 per cent of all carload freight originating in the United States. By its very nature this group of commodities is subject to freight rates which are in the lowest brackets.

The tonnage of products of mines originated by the western railroads for 1941 was 33.31 per cent of the total United States as compared with 49.85 per cent for the eastern railroads and was 17.47 per cent of the total United States as compared with 26.14 per cent for the eastern district. The western district figures for this group of commodities includes iron ore which is not characteristic of the western district, it being found almost entirely in the Missabe Range in Minnesota and is hauled by only two or three railroads for short distances to Lake Superior docks and has little connection with other products of mine except to inflate the average tonnage figures for the entire western district.

From the foregoing analysis of basic commodities originating in the western district and in the east it is plain that the consist of traffic in the west is vastly different than that in Official territory.

The western railroads have neither volume, actual or potential, nor the same kind of traffic as does the east. The operating, traffic and revenue questions are unlike in the two districts. It is obvious as an example that earnings of the Pennsylvania Railroad in the east contribute nothing to the support of the Mo-Kas-Texas Railroad in the southwest. Each railroad must find its support in the tonnage and rates derived from conditions existing in its own respective territory. Necessarily these conditions are not standardized and there is little likelihood of their ever being so.

In *Increased Railway Rates, Fares and Charges, 1942* (Ex Parte 148), 248 I. C. C. 545, in its conclusion, the Commission limited the authorized increases on agricultural products and livestock to 3 per cent while allowing 6 per cent on a general list of other commodities stating at page 611:

> "The situation as to relative strength of the granger roads and those properly treated as principally agricultural rail lines is the reverse from that of the principal bituminous coal and iron ore carrying lines in general. The former are relatively weak, and their revenues have no such cushion as the latter against the wage and other increases here considered. *Relatively, the agricultural lines do not transport as much high-grade, manufactured traffic as the other roads,*

not primarily coal carriers. If they are to receive any substantial amount of added income from a general rate increase, the amount which would be allocated to other traffic would be unduly high unless agriculture bears a part of the burden. The increased costs which form the basis of the petition herein are incurred as much for the movement of agricultural commodities as for any other traffic.

"Considering the factors involved, it seems just and reasonable to permit the going rates on agricultural products and livestock to be increased by a lesser percentage than non-basic commodities generally." (Emphasis supplied.)

The Commission's strict adherence to the Hoch-Smith principle emphasizes two things. (1) That the western railroads were restricted in increases upon their enormous volume of agriculture tonnage. While other railroads with greater volumes of manufactured products gained a larger share of the augmented earnings. (2) That the Commission recognized again the ability of manufactured articles to stand substantially higher freight rates.

The considerations given by the Commission in *Increased Railway Rates, Fares and Charges, 1942, supra,* seemed to be discarded in the Commission's determination in the instant proceeding.

In passing it might be well to consider that upon the recent reopening of that proceeding (which resulted in suspending, effective May 15, 1943, all of the increases in freight charges) various State Commissions of the west, some of them parties to the instant proceeding, laid spe-

cial emphasis upon the increases which had been authorized on products of agriculture, including livestock, and asked especially that such increases be removed.

To illustrate the effect upon the western railroads if the eastern level of rates should be imposed in the west, we show on page 119 of our original brief that the transfer of the eastern rate level to all carload traffic in the west would have caused a reduction in earnings of $175,293,389 and to less-carload traffic a reduction of $7,976,870, or a total of $183,270,259. This figure is startling and when consideration is given to the fact that the net railway operating income of the railroads of the western district in 1939 was $178,115,556 we find that according to the study of Dr. Edwards; *if the eastern level of earning were applied in the western district in 1939, it would have not only left the western railroads without any net railway operating income but would have produced an operating deficit.*

Bearing in mind these facts, it is difficult to understand how the Commission can arrive at the conclusion, as shown on Sheet 264, that: "When analyzed in this light the differences that exist in the consist of traffic in these respective territories are not so substantial or of such character as to warrant the present differences in rates," and then prescribe a reduction of rates on class traffic in the west and interterritorially to and from the west 10 per cent for the interim basis and to prescribe the same basis of rates for transportation of class rate traffic as

has been prescribed for Official territory as a permanent basis. To do so is to disregard entirely the facts adduced of record.

The Finding of the Commission That the Revenue Needs of Carriers in Official Territory Are Greater Than in Other Territories Is Not Supported by the Evidence of Record.

On Sheet 275 the Commission, in discussing the findings, states:

> "This finding as to the justness and reasonableness of the intraterritorial official class rates is based in part upon a consideration of the returns from operation of the various respondents in the several territories as reported to us, which we have considered pursuant to stipulations of record. *From those returns and the whole record we find and determine that the revenue needs of the carriers in official territory, with respect to their class rate traffic, are greater than is the case as to the class rate traffic of the carriers in the other territories described.*" (Emphasis supplied.)

In order to demonstrate that such a conclusion is erroneous we set forth below the rates of return for the years 1921 to 1941, inclusive, which is the period between World War I and II, together with composite figures for the 21 year period and percentages by which the western railroads' rate of return was under or over the eastern carriers' rate of return. For the 21 year period the western district carriers' rate of return was only 84.08 per cent of the eastern carriers' rate of return.

Year	Eastern District	Western District	Percentage Western District Under (−) or Over (+) Eastern District
1921	2.70	3.01	+11.48
1922	3.35	3.39	+ 1.19
1923	4.60	3.78	—17.83
1924	4.28	3.74	—12.62
1925	4.90	4.01	—18.16
1926	5.16	4.30	—16.67
1927	4.40	3.79	—13.86
1928	4.82	4.26	—11.62
1929	5.05	4.41	—12.67
1930	3.27	3.07	— 6.12
1931	1.89	1.91	+ 1.06
1932	1.46	0.77	—47.26
1933	4.97	1.23	—37.56
1934	1.91	1.26	—34.03
1935	2.17	1.32	—39.17
1936	2.67	1.88	—29.59
1937	2.27	1.71	—24.67
1938	1.26	1.09	—13.49
1939	2.34	1.65	—29.49
1940	2.66	2.06	—22.56
1941	3.63	3.36	— 7.44
Average 21 Years	3.14	2.64	—15.92

Taken from Exhibit 66, Page 9.

The record as made in this proceeding does not substantiate the Commission's statement that the revenue needs of the eastern carriers are greater than the carriers in other territories. On Sheet 246 the Commission recognizes the fact that the eastern carriers' preponderance of high-grade traffic affords a greater source of revenue than do the products of agriculture to the western carriers. The Commission also refers to the extremely low rates on livestock and the products of forest, the preponderance of which originates on the lines of the western carriers as set forth in the next above topical subject.

Under the Interstate Commerce Act, as heretofore administered by the Commission, one of the prime considerations in determining the lawfulness of rates was the ability of traffic to pay, or the value of the service rendered.

As before mentioned, under the Hoch-Smith Resolution, Congress directed the Commission to investigate the rate structure and to "make, in accordance with law, such changes, adjustments, and redistribution of rates and charges as may be found necessary to correct any defects so found to exist."

In its report in *Revenues in Western District*, 113 I. C. C. 3 (Ex Parte 87), the Commission at page 8, concluded to deal first with the western district in order to determine "(1) What products of agriculture, including livestock, are affected by the depression; (2) what, if any, reductions may lawfully be effected in the rates or charges on products of agriculture, including livestock; (3) whether any rates, fares, or charges, either on particular classes and kinds of commodities or classes of traffic, in particular sections or between particular localities in the western district, or otherwise, might lawfully be authorized or required to be increased, and if so, to what extent, in order to compensate for such rate reductions, if any, as may be found proper; * * * "

To indicate the extremely low nature of the rates on shipment of the commodities involved in the Docket 17,000 proceedings we show in Appendix "A" (11 pages) typical movements of commodities in the west, the rates

as prescribed in cents per 100 pounds as compared with the Edwards' fully distributed costs for handling average loads of all traffic. Page 1 shows the rates on hogs in single deck cars. The Edwards' costs, Column A (3), are computed on the short-line rate making distance as shown in Column (1). The costs shown in Column B (4) are based on the usual maximum circuity observed in Fourth Section orders, such distances being shown in Column 7. Page 2 shows similar situations with regard to the rates on stock cattle, carloads. Page 3 shows similar information as to beef cattle, carloads.

Bearing in mind the statement of the Commission as set forth on page 246 of the report, repeating what was stated in *Livestock-Western District Rates, Supra*, "that livestock is a commodity which from its nature cannot be expected to do more than pay its own way, in other words, it cannot sustain a rate level which will produce more than the cost of rendering the service plus a minimum of profit," Pages 1 to 3 of Appendix "A" clearly indicate that the present rates do not even cover the cost of rendering the service on other than the shortest hauls.

Page 4 shows the situation as to brick carloads, rates on said commodity being prescribed in Docket No. 14617 *Southwestern Brick Cases*, 156 I. C. C. 191; 157 I. C. C. 467. It will be noted that even on the short-line rate making distances for 400 miles and over the rates are less than the costs as shown by Dr. Edwards.

Page 5 shows similar information as to sand and gravel, rates on which were prescribed in Docket 17,000, Part 11-A,

Rates on Sand, Gravel, and Crush Stone, 177 I. C. C. 621, for application between points in western territory. In all instances the rates as prescribed via the short-line rate making distance, as well as via the circuity distances, as shown on the statement, are lower than the costs as found by Dr. Edwards.

Brick as well as sand and gravel are inherently low-rated commodities and cannot move upon rates that would be warranted by the fully distributed costs shown by Dr. Edwards.

Page 6 shows similar situations as to gasoline, rates on which were prescribed in Docket No. 28106, *Petroleum Rail Shippers' Ass'n. v. Alton & S. R.*, 243 I. C. C. 589, from midcontinent territory to Western Trunk Line destinations. The average load is taken from Dr. Edwards' Exhibit 165. Rates on refined petroleum products are far below fully distributed costs. As shown on page 6 Appendix "A", such rates drop far below 60 per cent of such fully distributed costs.

Page 7 shows the situation as to cotton, less-carload, into compressed points and carload therefrom. The lowest rates on cotton are carload rates which to be availed of necessitates cotton being compressed at or near the point of origin. Page 7 shows typical movements from origins in Oklahoma and Texas to destinations in the south, comparing the rates with the costs as shown by Dr. Edwards. The carriers load less-carloads of cotton at country stations or make an allowance to the shipper for such load-

ing. The car is then hauled to the compress which unloads the cotton. The Edwards' costs are not designed to cover an operation of this kind. Therefore, we have used on the inbound less-carload lots the carload costs for five tons in a box car to the compress point and carload weights of 25 tons from the compress point to destination. It will be observed that the rates on cotton to important southern consuming points are far below the fully distributed costs as shown by Dr. Edwards.

Pages 8, 9, 10 and 11 show the situation as to wheat and its products, rates on which were prescribed by the Commission in Docket No. 17,000, Part 7, *Grain and Grain Products*, 205 I. C. C. 301. The showing as to wheat illustrates the movement through successive transit points from origins in Kansas, Oklahoma and Texas to Memphis, Tenn., an important gateway on traffic to the south. The movement in all instances from the last transit point to Memphis shows the products of wheat. The Commission is well aware of the varied services required by the grain industry as to transit and that on an average two to three stops are necessary.

As testified by Dr. Edwards, each such movement must be considered as a separate movement for the purpose of applying his cost formula. Pages 8, 9, 10 and 11 reflect the simple average of the present rates on grain to Memphis. As is show on page 11, simple average of the Edwards' fully distributed costs is but 76.23 per cent. Furthermore the western lines are faced with the recent de-

cision of the Commission in I. & S. Docket 4208, *Grain to, From and Between Southern Territory,* mimeographed, decided February 13, 1945, which requires further reductions in the rates to Memphis. The average of such rates as a result of I. & S. Docket 4208 will be but 70.38 per cent of the average fully distributed costs.

Bearing in mind that the Commission, under the mandate contained in the Hoch-Smith Resolution, prescribed rates on the preponderance of traffic originating in the western territory, the Commission in its report in the instant proceeding is requiring a reduction in the rates which will reflect in the revenues of the western lines for the handling of such high-grade traffic as may be transported. Traffic, generally, moving on class rates can well afford to pay somewhat more than the fully distributed costs so that products of agriculture, livestock and low-grade commodities may move on rates less than the fully distributed costs.

On the bottom of Sheet 183 the Commission sets forth a table to show the contribution in excess of out-of-pocket cost made by the various classes of commodities in carloads. This tabulation is misleading as it would lead one to believe that the railroads in the western district have a margin between out-of-pocket costs and rates, *i.e.* 18 per cent for products of agriculture and 55.7 per cent for manufactures and miscellaneous. This, however, is not true. In the statement below there is shown the margin between

out-of-pocket costs and revenues for the eastern and western districts by groups of commodities, based on information of record.

Item	Percentage by Which Freight Revenue Exceeds Edwards' Out-Of-Pocket Costs	
	Eastern District	Western District
Products of Agriculture	19.2	26.9
Animals and Products	12.7	24.2
Products of Mines	43.5	35.2
Products of Forests	40.8	30.8
Manufactures and Miscellaneous	51.6	49.4
Total Carload Traffic	43.2	38.0

Computed from information in I.C.C. 28300 Decision, Edwards' Exhibit 195, and 1939 I.C.C. Commodity Statistics.

The above statement indicates that the spread is greatest between out-of-pocket and revenue for manufactures and miscellaneous, products of mines and products of forests, while animal and its products and agricultural products are much lower. This is true in both the east and the west. However, there is a marked contrast in the east where the margin for manufactures and miscellaneous is larger than in the west. The margin as to products of mines and forests are likewise materially larger in the east than in the west, both as to revenue and costs. This is significant, in view of the fact that there is nearly three times the volume of class traffic moving in the east than in the west, as is reflected by tons carried in 1939 in the three territories with the percentage of class rated traffic, using the table shown on Sheet 36, applied to each of these tonnages.

Considering these facts it is difficult to find a logical explanation as to why the Commission reduces the class rates in the west and increases those in the east. This showing would indicate that the reverse should be true.

Nothing is so essential to the successful operation of railroads than is traffic. The impact of the war has demonstrated that fact in no uncertain manner.

On Sheet 247 the Commission recognizes that there is a wide difference between the traffic density in the east and the west. This refers to the period from 1921 to 1941 which is a more or less normal period. The difference in traffic density naturally is narrowed with the involvement in the war. The load on the western lines during the war in Europe and in the Pacific has been particularly heavy due to many factors, among which is the absence of steamer service through the Panama Canal and coastwise service between the Eastern Seaboard and the Gulf ports, together with a large number of army camps located in western territory, also the fact that there are only seven transcontinental lines crossing the Rocky Mountains to supply the armed forces in the Pacific compared with the vast network of railroads operating in the Official territory and serving the Atlantic ports. Undoubtedly the difference in traffic density will be further narrowed temporarily, now that the conflict in Europe has been concluded and every effort is being made toward a rapid and successful conclusion of the conflict in the Pacific. Necessarily there will be vast amounts of tonnage moving to the Pacific Coast. These

conditions are only temporary and the revenues from operation of the carriers during the war period have no significance in the fixation of a normal, permanent basis of rates and should be given no weight in determining the needs for revenue of carriers, in any territory, in peacetime operations.

There is a direct relationship between population per mile of line and traffic density. Such information is of record and we show below the population of Official, Southern and Western territories in 1940; the railroad mileage and the population per mile of line. The population per mile of line in Official territory in 1940 was 277 per cent of the population per mile of line in Western territory.

	Population 1940	R. R. Mileage 1940	Population Per Mile of Line
Official	64 118 346	67 022	957
Southern	23 948 562	40 126	594
Western	43 602 367	126 522	346

The Commission recognized the difference in traffic density between the eastern and western districts at Sheet 247, stating that "During the period from 1921 to 1941 the revenue ton miles per mile of line of eastern district roads have been more than twice, and in some years three times, those of the western district roads." The western carriers originating, as they do, a preponderance of low rated traffic with substantially fewer people to serve and, therefore, lighter traffic density, could not possibly maintain an adequate transportation system under any uni-

form scale of rates designed to move high-grade manufactured products based on the operating and other conditions existing in the Eastern territory.

A uniform class rate structure which would yield the eastern lines a fair rate of return would result in bankruptcy to the western lines.

The Commission must realize from its own statements and the statistics as set forth in the report that the record does not support the statement that "The eastern lines are in greater need of revenue than the carriers in other territories."

The Inflated Movement of Tonnage and the Resulting Revenues Therefrom During the War Period Are Not Criteria as to What Would Be Lawful Rates During Normal Times.

The Commission in its report seems to be unduly impressed with the fact that railroads in recent years have enjoyed enormous tonnages and have substantially increased their revenues. Nothing could be more fatal to the continuance of an adequate transportation service than to prescribe rates based on such inflated tonnages and revenues, for to do so would fail to give consideration to the necessities for peace time operation. In the statement below we show net railroad operating revenues, expenses, taxes, returns and net railway operating income for Class I carriers in the western district for the years 1939 to 1944, inclusive.

Year	Railway Operating Revenue	Railway Operating Expenses	Railway Tax Accruals	Equipment and Joint Facility Rents	Net Railway Oper. Income
		.000 omitted			
1939	$1 514 796	$1 144 475	$131 338	$ 60 868	$178 115
1940	1 598 869	1 178 336	138 085	58 278	224 170
1941	2 005 475	1 389 573	180 753	64 211	370 938
1942	2 974 105	1 777 166	458 000	83 718	655 221
1943	3 788 827	2 287 676	805 450	93 044	602 657
1944	4 020 701	2 547 972	880 528	104 459	487 742

SOURCE: Years 1939 through 1943 from I.C.C. Annual Reports of Steam Railways. Year 1944 from I.C.C. Statement No. M-100 of Class I roads operating revenues and expenses for 12 months.

It will be observed that the net railway operating income for 1942 was over three times that in 1939. There was a slight recession in 1943 but in 1944 it had decreased until it was only a little over twice that earned in 1939.

In the table below we have shown the trend of increased labor costs per hour for Class I railroads in the western district 1939 to 1944.

Year	Hours Paid For	Total Compensation	Average Costs Per Hours-Cents	Index Numbers
	.000 omitted			
1939	992 553	$ 729 565	73.50	100.00
1940	1 015 157	749 608	73.84	100.46
1941	1 165 132	891 210	76.49	104.07
1942	1 358 032	1 143 057	84.17	114.52
1943	1 546 802	1 419 062	91.74	124.82
1944	1 644 433	1 570 087	95.48	129.90

SOURCE: Years 1939 through 1943 from I.C.C. Annual Reports of Steam Railways—Year 1944 from photostat copy of I.C.C. Report of Hours and Compensation—Class I Roads in Western District.

As indicated in the above table, for 1942 the index number is 114.52, a marked increase over 104.07 for 1941. The index number for 1943 is 124.82, an increase of 10.30 points

over 1942. 1944 index shows 129.90 and indicates a leveling off of the costs of labor.

It is not possible to ascertain, in sufficient time to file this petition, the increase in prices for material and supplies. However, we show in the statement below the trend of unit prices since June, 1939 which data was prepared by Dr. Parmelee of the Bureau of Economics, of the Association of American Railroads, for his annual Review of Railroad Operations.

	Unit Cost Indices	Per Cent
June 1939	128.6	100.00
December 1939	131.9	102.57
June 1940	130.8	101.71
December 1940	134.1	104.28
June 1941	139.6	108.55
December 1941	147.0	114.31
June 1942	152.0	118.19
December 1942	153.8	119.59
June 1943	163.6	127.22
December 1943	166.2	129.24
June 1944	169.3	131.65
December 1944	169.6	131.88

SOURCE: Page 14 of Dr. Parmelee's Review of Railway Operations in 1944.

From these unit cost indices we have computed the percentage relationship for two periods in each year through to December, 1944, based on June, 1939, as 100 per cent. These data show an increase in cost of approximately 32 per cent for the country as a whole which, we believe, is equally true as to the costs in the western district.

These statistics demonstrate that war time performance cannot be used to determine a reasonable and otherwise lawful basis of rates for peace time operation.

The Reductions in Class Rates in the Western District Will Result in Substantial Reductions in Revenues.

Using the tabulation shown on Sheet 36 of the decision to determine the percentage of class rated traffic and increasing the figures there shown to represent the revenue, we find that in the west 4.5 per cent of the carload revenue is derived from class rated traffic. This revenue is then reduced 5.32 per cent which is the composite reduction based on sample movements. These reductions for each of the sample movement groups are then applied to the class rated traffic moving in the groups as shown in Edwards' Exhibit 194. This produces a loss of revenue in carload traffic of seven and a quarter million dollars per annum. To this must be added a loss in revenues resulting from a reduction in less-carload rates that will raise the total revenue loss, due to the interim basis as prescribed, to $10,000,000 per year in the western district. In the Monthly Comment of Transportation Statistics, published July 7, 1945, Bureau of Transportation and Economics a loss of $14,000,000 is estimated for the western district. This figure is qualified as being a possible overstatement.

The findings of the Commission as to the interim basis are purely arbitrary, not based on any facts of record and seem to be dictated by a desire to satisfy proponents' demand for uniformity, with disregard for all of the elements heretofore considered by the Commission in determining a reasonable, lawful basis of rates.

No one has asked the Commission to increase the eastern scale 10 per cent, nor has anyone requested the Commission to reduce the western scale 10 per cent. The Commission's apparent desire is to satisfy proponents during an interim period by increasing the east and reducing the west. This will, of course, narrow the spread between the rates applicable within the respective territories but whether or not such rates would be reasonable and otherwise lawful is left to conjecture. Proponents of uniformity have no suggestion to make as to the measure of the rates within the west, with the exception of several representatives from Western Trunk Line territory. They desired the application of the eastern class rates to class rate traffic in the west. The principal traffic witness for the southwest had no suggestion as to what the basis of rates should be as long as there was uniformity.

The Commission knows and realizes that it would be an impossible task, as well as an unlawful one, to attempt to prescribe a permanent basis of rates until and unless there is a uniform classification established for application throughout the territory involved, and the Commission should be content to predicate their decision on the facts adduced of record without arbitrarily forcing these respondents to reduce their class rates 10 per cent merely for the purpose of achieving more uniformity than now prevails in the rate structures.

In deciding the issues involved in this proceeding the Commission must realize its statutory duty to the railroads

operating in the various territories. It should not assume such a strange and unusual attitude as the majority appears to have assumed but should be guided entirely by the Interstate Commerce Act and fix rates in obedience to such Act, not because of a hope or a prayer of any individual or group of individuals no matter how sincere they may be in their desire. The Commission's duty of regulation ceases when it prescribes rates in conformity with the existing statutes. It should not be persuaded by theory or any other consideration that has not been followed in the past. It cannot completely disregard the necessities of sufficient revenues to maintain the western railroads as adequate systems of transportation. There is nothing contained in the amendatory acts to the Act of 1940 that in any way changes the Commission's duty or enlarges upon its authority. Such amendatory acts are no different, in so far as the Commission's authority is concerned, than the Hoch-Smith Resolution. The Commission was of the opinion that that resolution enlarged its authority and created new principles of rate making. The United States Supreme Court, in *Ann Arbor Co. Railroad, et al.* v. *United States, et al.*, 281 U. S. 658, 669, appropriately decided that the Hoch-Smith Resolution did not increase the Commission's power or change in any manner whatsoever the considerations necessary to be given in the fixation of rates. The same is true as to the amendatory acts to the Act of 1940.

While the interim basis will, of necessity, substantially reduce the western carriers' revenues, we know that the

permanent basis will have more far reaching effects, some of which effects will be hereinafter discussed.

If the present decision is forced on the western railroads the *responsibility* for the continued progress and maintenance of adequate systems of transportation in the west is with the Interstate Commerce Commission.

The Commission has within its power greater control over the economics of this country than any other branch of the government. That control must be judicially exercised. To do other would be an abuse of the trust imposed with the Commission by the Congress and the people of the United States.

Such a decision as rendered would, perhaps, be excusable if this country were a wilderness with no recognized shippers or industry, such as manufacturing in the east and agriculture in the west. The various industries have been built in this country, in the east as well as in the west, with full regard for the then present rate adjustments. The revolutionary adjustment, such as the one contemplated in the instant case with all of its resulting ramifications, will tend to if not seriously disturb the economics appertaining to industry in the western territory so as to result in the possible ruin of at least some of such western industries which are prospering under the present rate adjustment. Further, there is no doubt that if the present decision is forced upon the carriers in the western territory such carriers, financially, will be seriously affected.

The Permanent Rates Prescribed Are Based, Among Other Considerations, on a Cost Study Which, if Followed to Its Logical Conclusion, Would Warrant Higher Rates in the West Than Those Prescribed.

The rates prescribed by the Commission as a permanent basis are shown in Appendix 10 of the report. Such rates are to apply to, from and within all of that territory roughly described as east of the Rocky Mountains. Such scale is approximately 115 per cent of the present class rate scale, up to 1500 miles, as prescribed by the Commission in *Eastern Class Rate Investigation*, 164 I. C. C. 314, as subsequently changed by general revisions.

The longest short-line rate making distance involved in this proceeding is that from Fort Hancock, Texas, to Madawaska, Maine, 2,802.8 miles. Therefore, the Appendix 10 Scale must necessarily be extended beyond 2,500 miles. Because of the fact that, as hereinafter explained, Mountain-Pacific territory will undoubtedly become involved, the Appendix Scale has been extended by us arbitrarily for the purpose of discussing the merits of the issues involved to a distance of 3,500 miles on two plans: (1) At a uniform rate of progression of 7 cents for each 100 miles as employed by the Commission in the last miles of the Appendix 10 Scale and (2) at a diminishing rate of progression corresponding with that used by the Commission for distances between 2,000 and 2,500 miles. Unless otherwise stated, reference to the Appendix 10 Scale

will be the scale extended at the uniform rate of progression.

We find from an examination of Appendix 10 that rates for the lower rated classes are, in many instances, below Dr. Edwards' fully distributed costs and even below out-of-pocket costs.

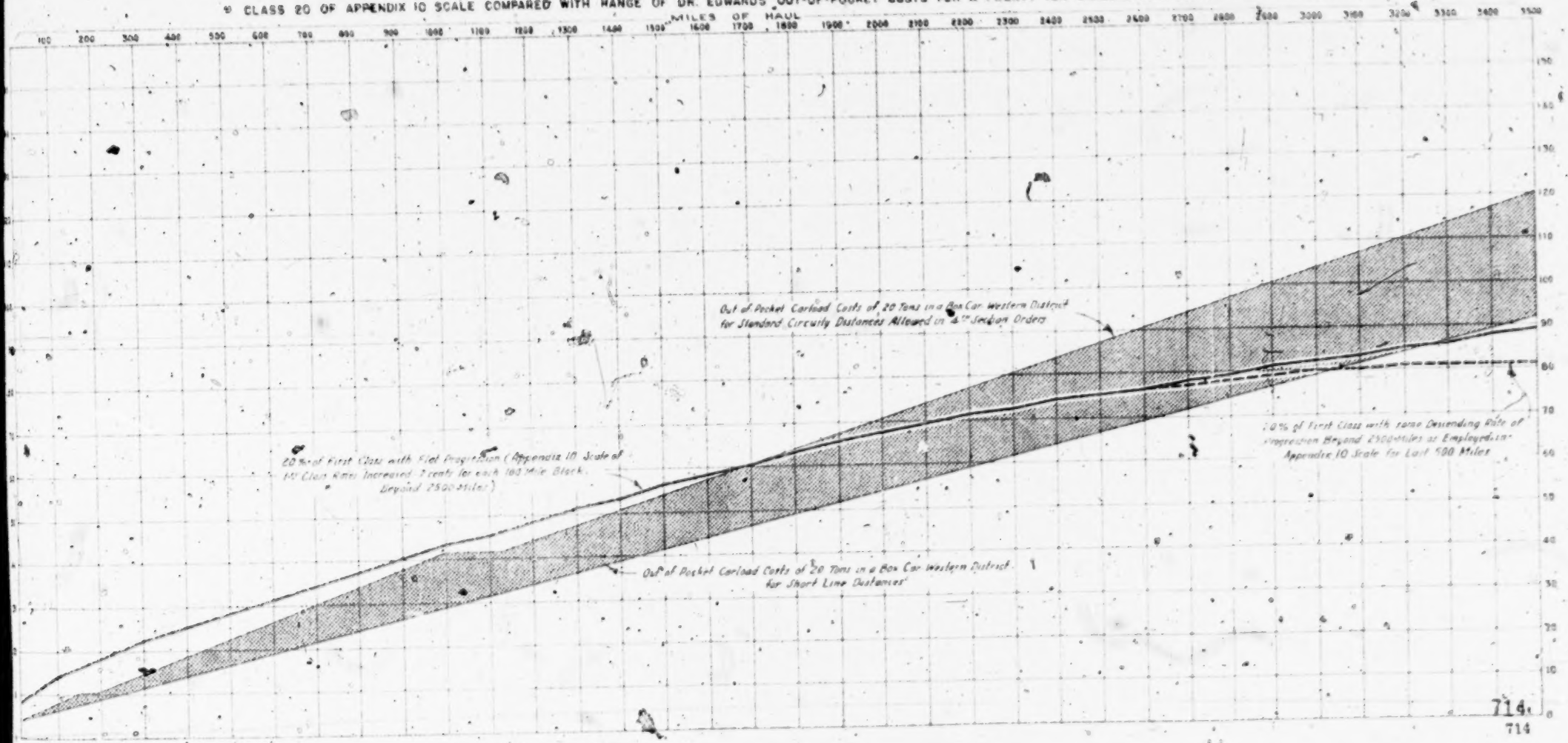
In Appendix "B", (five pages) we show the rates per 100 pounds on 40 tons in a gondola car under Classes 20, 17½, 16, 14½ and 13, as compared with the Edwards' costs for handling such traffic. The Edwards' costs are computed on three different bases. (1) Out-of-pocket costs for short-line distance computed as per the rate making formula. (2) Out-of-pocket cost for maximum distance computed as per Standard Fourth Section Circuity Formula and (3) fully distributed costs for short-line distance computed as per rate making formula.

Appendix "C", (five pages) shows similar information as to 20 tons in box cars.

The rate comparisons in Appendices "B" and "C", begin at 800 miles inasmuch as it is in the longer reaches of the scale that the rates as prescribed become progressively lower and below cost. To illustrate the deficiency in the rates prescribed in Appendix 10, we show in the chart (Figure 1) class 20 of Appendix 10 Scale compared with the range of Dr. Edwards' out-of-pocket cost for a 20 ton box car in the western district.

FIGURE 4

CLASS 20 OF APPENDIX 10 SCALE COMPARED WITH RANGE OF DR. EDWARDS' OUT-OF-POCKET COSTS FOR A TWENTY TON CARLOAD IN A BOX CAR - WESTERN DISTRICT



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The out-of-pocket range is designated by "cross-hatching." The lower line of the out-of-pocket range is the straight line of out-of-pocket carload cost determined by the assumption that the short-line distance is the actual route of movement. The upper line of the out-of-pocket range was constructed for the purpose of showing the costs over the maximum distances for which the Commission has granted Fourth Section relief, *i. e.*, 150 miles and less 10 per cent; over 150 miles but not over 1,000 miles 50 per cent; and over 1,000 miles 33⅓ per cent, with due allowance for the blending of the various percentages of circuity at distances just beyond 150 and 1,000 miles, respectively.

It is well known that for the country as a whole very little traffic moves via short-line rate making routes. Normal working routes authorized by tariffs are longer than the multiple route formula. From chart, Figure 1, it will be noted that the 20 per cent rate goes into the out-of-pocket cost range at a distance of approximately 1700 miles and goes below the out-of-pocket range at a distance of 3,250 miles. The broken 20 per cent line beyond 2600 miles, constructed with the same descending rate of progression beyond 2500 miles as used in Appendix 10 Scale for the last 500 miles, is even further below the out-of-pocket cost.

Referring to Appendix "C" it will be noted that Classes 17½, 16, 14½ and 13, on freight handled in box cars, descend into the out-of-pocket range, based on short line rate making distances at approximately 2400 miles,

1900 miles, 1400 miles and 800 miles, respectively (Column A(3)), and that the percentage of the class rates to out-of-pocket Fourth Section mileage costs descends gradually so that at 3500 miles the percentage of such cost is 65 per cent on Class 17½; 59 per cent on Class 16; 54 per cent on Class 14½ and 48 per cent on Class 13 (Column B(7)). In relation to the fully distributed costs, based on short-line rate making formula (Column C(8)), the relation is 48 per cent on Class 17½; 44 per cent on Class 16; 40 per cent on Class 14½ and 36 per cent on Class 13 at the distance of 3500 miles.

20 tons in a box car was selected for this study because it is the prevailing minimum weight in the classification. There are a few commodities subject to a minimum weight as high as 50,000 pounds.

As to Appendix "B", 40 tons was selected as a representative load for a gondola car because of the nature of commodities subject to class rates that would move in gondola equipment that would load in the neighborhood of 40 tons. From Appendices "B" and "C" and from the chart (Figure 1) it will be clearly seen how ridiculously low the Appendix 10 rates are, especially on the lower classes. Even greater loads would show that the lower classes result in rates below out-of-pocket costs.

At Sheet 263 the Commission states that:

> "Out-of-pocket costs, however, should ordinarily establish the floor of all rates. Rates yielding merely out-of-pocket costs have been condemned as being

less than reasonable minima. * * * Rates which yield something more than out-of-pocket costs have also been found to be less than reasonable minima."

In determining whether a rate falls below out-of-pocket cost the Commission must give due consideration to the minimum weights on the particular commodities and not the average loading experience.

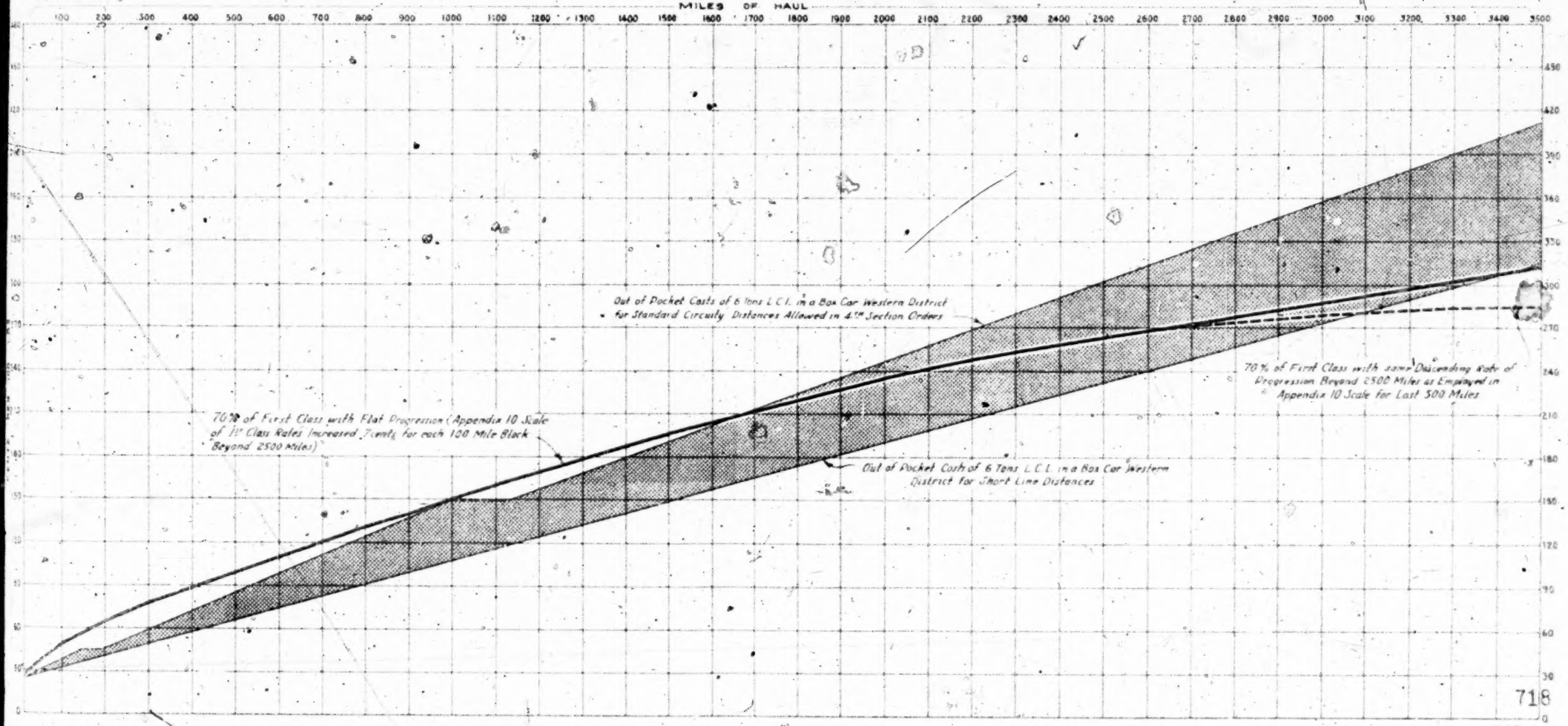
The Merchandise Report of the Association of American Railroads, which by reference is a part of the record in this proceeding, (see page 123, Volume 5 of transcript) indicates that the weighted average rate assessed on l.c.l. traffic in the western district for the period involved was 69.07 per cent of first class.

The chart (Figure 2) is a comparison of Class 70 or 70 per cent of the prescribed Appendix 10 scale with the range of Dr. Edwards' out-of-pocket costs for 6 tons of l.c.l. freight in a box car moving in the western district.

49

FIGURE 2

CLASS 70 OF APPENDIX 10 SCALE COMPARED WITH RANGE OF DR. EDWARDS' OUT-OF-POCKET COSTS FOR SIX TONS OF L.C.L. IN A BOX CAR - WESTERN DISTRICT



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This chart shows that the prescribed l.c.l. rates are on the average only slightly above out-of-pocket costs up to 1600 miles. From there on the l.c.l. rates go into the out-of-pocket range and for the longer distances a few go below the out-of-pocket cost using the short-line or rate making formula.

The report, at page 155, shows that in 1939 the western district carriers lost $34,348,277 in the transportation of l.c.l. freight. Yet the Commission in this proceeding imposes further drastic reductions on l.c.l. freight which moves, in many instances, on class rates, thereby casting an additional burden upon carload traffic in the west, while the smaller deficit in the east will be reduced appreciably by reason of the 10 per cent increase in the interim period and 15 per cent as a permanent basis.

The Commission apparently gave much weight to the Edwards' cost study for at Sheet 263 the Commission states:

> "While perfection has not been attained, we are convinced that the studies made and presented by members of our staff as evidenced in this proceeding *possess sufficient attributes of accuracy to enable us to rely upon them in reaching our conclusions.* Respondents have not supplied us with any better ones, although they have, through their criticisms and suggestions, enabled us to make a better analysis and appraisal of those introduced by members of our own staff." (Emphasis supplied)

The Edwards' cost study shows that the costs in the western district are from 6 per cent to 15 per cent higher

than in the eastern district (Sheet 147). However, when it came to constructing a class rate scale the Commission ignored such higher costs in the west, apparently for reasons as stated on Sheet 139. "The cost study gave no consideration to differences in the ability to pay or the various kinds of traffic handled in each territory, this being viewed as an element for consideration separate and apart from costs." This indicates that the Commission has taken into consideration the enormous volume of war traffic handled during the recent years for which statistics are available.

If the costs presented by the Commission's staff "possess sufficient attributes of accuracy" to enable them to be relied upon in reaching its (the Commission's) conclusions why, we ask, has the Commission waived aside such cost studies in favor of a uniform rate scale?

The Cost Studies Presented by Commission's Representatives Do Not Reflect the Cost for Transporting Any Particular Traffic, Therefore, Such Costs May Not Be Used as a Factor in Determining the Level of Class Rates in Various Territories.

The cost studies presented by the Commission's representatives are based on an extensive use of estimates and unusual license has been taken in processing the factual material, as well as the employment of many arbitraries and indulging in many assumptions, some violent, in dealing with entire districts and the country as a whole. The Commission has recognized that at least some of the criti-

cism and suggestions of witnesses for respondents were meritorious and has used such criticism and suggestions to enable it to make a better analysis and appraisal of the formula introduced by members of its staff.

In criticizing the formula, western respondents pointed out that of a total of 117 items in the formula, 59 were estimates and out of a total of 500 sequences in the process of application, 458 were based on estimates.

Three types of units were used in the application of the costs as presented, *i. e.*, per car, per car-mile and per gross ton-mile.

It is acknowledged by Commission's representatives that the formula as introduced, and as relied upon by the Commission, was to show the costs of handling all traffic. The formula used is dissimilar to that used in Docket No. 28190, *New Automobiles in Interstate Commerce*, 259 I. C. C. 475. In the latter case Commission's representatives endeavored to present a formula showing the costs of transporting new automobiles. Without admitting that the formula used in the *New Automobiles Case* or the instant proceeding demonstrates within a reasonable degree of accuracy the costs of handling automobiles, class rate traffic or any other traffic, we direct the Commission's attention to the dissimilarity in the two formulas as presented.

In the *New Automobiles Case, Supra*, a more detailed formula was employed, in which the elements of expense were distributed to a greater number of service units, including locomotive miles, locomotive ton miles, train miles,

gross ton miles, car miles, switch engine hours, and provided for both the out-of-pocket as well as the full cost, including return on investment. In that case certain carriers were required by order of the Commission to submit returns on the full cost as well as the out-of-pocket cost basis covering specific movements of automobile traffic by indicated routes. Much of the information furnished by the carriers in response to the order of the Commission was based on estimates or on studies that had been made several years before the submission of such studies to the Commission.

The formula, accepted by the Commission in the instant proceeding, being based largely on estimates and assumptions, appears to be hewn out of the rough with an ax rather than using the necessary refinements in order to determine with reasonable accuracy costs of handling any particular kind of traffic.

Commissioner Porter, in his dissenting opinion, beginning at Sheet 284, rightfully states:

> "It is thus clear that the cost evidence does not afford a basis for a finding of the actual or relative costs of class-rate traffic in the various territories. *The report does not show, except in nebulous fashion, that the cost figures represent apportionment of totals, based on estimates; that they involve many assumptions and acts of judgment; and are not computations from direct, original cost figures for particular movements.* • • • *It fails to disclose clearly that when making the studies it was assumed that the consist of the traffic is the same in the different territories,* when

the fact is, as I have pointed out, that the traffic consist differs widely in the respective territories. *The result is that theoretical costs are produced, based upon assumptions which are not facts, and upon comparisons of unlike things.*" (Emphasis Supplied).

As has heretofore been pointed out, the cost of handling traffic in the east and the west varies greatly. The density of traffic varies greatly. From a comparison standpoint it would be just as well to compare cheese with chalk as to compare traffic and transportation conditions in the east and the west and come to a conclusion that they are not substantially dissimilar.

All costs computed in Dr. Edwards' study are based on composite averages derived from the entire operation conducted in the respective territories. They are made up of the average terminal expense resulting from hauling to and from large, small and intermediate size terminals, and to and from isolated localities; and the average line haul expense from hauling in local or way trains, manifest and heavy drag freight trains. Being based on composite averages, the comparison of costs does not reflect the difference due to the physical characteristics of the lines, but reflects the combined effect of the physical characteristics and the class of traffic carried.

The report, Sheet 145, recognizes the influences of special classes of traffic on the ascertained cost when it refers to the low cost in the Pocahontas and Kentucky territories because of the existence of a very heavy coal movement. The cost study finds (Sheet 143) in the first example that

based on identical loads for 300 mile hauls the cost in the Pocahontas territory is 35 to 37 points lower than the cost in the other portions of the eastern territory. In other words, the cost in the eastern territory, excluding Pocahontas region, is shown by the study to be about 50 per cent greater than within the Pocahontas territory. It is not to be concluded that it costs 50 per cent more to haul coal in that region; or to haul any other particular class of traffic, or that the physical conditions are that much more difficult. It merely indicates that the net difference due to the composition of traffic and operating conditions is that great.

When the resulting composite average cost is unfavorable to the territory carrying the most low grade traffic, it is the effect of the more difficult operating conditions reduced by the advantage of hauling a greater proportion of low grade traffic and the difference solely due to the more difficult operating conditions is the sum of both effects.

For these reasons, when the average cost in the western territory, which carries the greater proportion of raw material, is found by a comparison of the composite averages to be six to eight points greater than such cost in the eastern territory, it follows that the difference due to the physical operating difficulties in the western territory is even greater—how much greater it is not possible to say, but judging from the results obtained in the Pocahontas and Kentucky territories it is substantial and the dif-

ferences due to the physical characteristics are not inconsequential.

The art of cost finding, while it has been given consideration for several decades, has not as yet reached that degree of perfection that would enable the Commission to determine the costs for transporting any particular kind of traffic. To assume that the Edwards' cost formula "possesses sufficient attributes of accuracy" is to do violence to equity and fair play.

It is true respondents did not submit a cost study, but regardless of such fact the failure to do so did not lend credence to the Edwards' cost formula which should not, under any circumstances, be accepted by the Commission as even approaching that degree of accuracy necessary to determine the costs of handling class or any other kind of traffic.

The Permanent Scale of Rates as Shown in Appendix 10 Is Arbitrary in So Far as the Level Is Concerned, as Well as the Progression of Such Scale, and Does Violence to Former Decisions of the Commission Respecting Class Rates.

Appendix 8 of the report shows the principal interterritorial scales of Class 100 (first-class rates) as prescribed by the Commission for application in the various territories as shown. The differences in the level of these scales and the variations in the rates of progression are shown at Sheet 128 of the report. In both instances the data is limited to 1500 miles, presumably for the reason

that as a practical matter no intraterritorial hauls exceed 1500 miles.

In order that the Commission may compare the effect of the prescribed permanent scale (Appendix 10) on both intra and interterritorial traffic we show in Appendix "D", (two pages), a comparison of the prescribed rates and the rate of progression therein as compared with other scales as prescribed by the Commission for application within the territories involved in the instant proceeding. It is proper to point out that the rates for distances over 1500 miles are of particular concern to the lines in the western district; this for the reason that for such distances the rates do not apply on intraterritorial traffic, nor to any appreciable extent on interterritorial traffic moving wholly within the eastern and southern districts. The longest distance under the prescribed formula from Official territory, exclusive of New England and Zone C in Michigan to Southern territory, also excluding the Peninsula of Florida, does not exceed approximately 1628 miles which is the distance from Rouses Point, New York to Baton Rouge, Louisiana.

In Appendix "D", page 1, we show for each 100 mile block the same data as is shown in Appendix 8, with the following additions and exceptions: (1) The New England scale, the Southern border area scale and the Western Trunk Line Zone II scale have been omitted. (2) The Western Trunk Line "basic scale" has been included for the reason that this is the "base scale" upon which the

Zones I, II and III differentials are laminated to make the interterritorial rates between Official and Southern territories on the one hand and Southwestern and Western Trunk Line territories on the other; also between Southwestern and Western Trunk Line territories. (3) In each case the scales have been extended beyond the prescribed distances, using for this purpose the same rate of progression as was used in the prescribed scales for distances over 700 miles (over 800 miles in the case of the Southern scale). (4) Column B shows in each case the rate of progression in the rates shown in Column A for each 100 miles over 100 miles.

We find that the distance computed on the prescribed formula (short-line rate making distance) from Ft. Hancock, Texas to Madawaska, Me., is 2802.8 miles and for this reason it is necessary to give consideration to rates for distances over 2500 miles. Page 2, Appendix "D", shows similar data for distances over 2500 miles, based on page 1. On page 2 each of the scales has been extended at the same rate of progression as shown on page 1, except as noted in Notes A and B thereon.

Considering the much longer inter-territorial hauls between Western territory, on the one hand, and Official and Southern territories, on the other hand, the Appendix 10 scale, with its rapidly diminishing rate of progression for the long hauls, will be particularly disastrous to the western railroads.

Appendix "E", page 1, is a chart similar to that shown in the report at page 128, except that it is based on the data shown in Appendix "D", pages 1 and 2. It will be observed that from 500 to approximately 1650 miles the Appendix 10 scale is the same or slightly higher than the WTL-SW basic scale; for distances over approximately 1650 miles the Appendix 10 scale is progressively lower than such basic scale; when extended beyond 2300 miles at a diminishing rate of progression corresponding with the distances over 2,000 miles, the Appendix 10 scale actually becomes lower than the extended eastern scale.

It should be borne in mind that the basic scale is never applied alone to determine rates, it being used only for the construction of interterritorial rates in combination with the Zone I, II and III differentials laminated as provided in the *Western Trunk Line Class Rates*, 164 I. C. C. 1, and *Consolidated Southwestern Cases*, 123 I. C. C. 203.

As shown in Appendix "E", page 1, the effect of the Appendix 10 scale is to eliminate practically all of the added differentials as prescribed by the Commission for Zones I, II and III up to 1650 miles; and to make the rates actually less than the flat basic scale (without differentials) for all distances over 1650 miles.

As an illustration of the effect on interterritorial traffic from Official territory we show, on page 2, Appendix "E", a comparison of Class 100 (first class) rates from New York, N. Y. to stations along the rate-making route to El

Paso, Texas. The distance under the prescribed formula is 2221 miles which is computed via Hannibal, Mo., Kansas City, Mo., and Neva, Kas., representing, respectively, the western boundaries of Official territory and WTL Zones I, II and II. Page 2 is similar to page 1 except that it shows the first class rates to stations along the route referred to above, based on the prescribed Appendix 10 scale as compared with rates made as follows: (1) Eastern scale up to 1092 miles (the distance to Hannibal, Mo.), (2) WTL-SW basic scale for all distances, plus WTL-SW zone differentials as follows: (a) Zone I differentials for distances over 1092 miles (b) Zone II differentials for distances over 1289 miles (c) Zone III differentials for distances over 1420 miles.

Appendices "D" and "E" show that whereas in previous class rate cases the Commission has adhered to the principle of a constant rate of progression for distances over 700 miles (800 in the Southern scale) it has, in the instant proceeding departed from such principle with disastrous results. Particularly is this true with respect to interterritorial traffic wherein the western railroads are particularly interested.

Page 2, Appendix "E" shows that under the laminated basis prescribed in the *Western Trunk Line Class Case* and *Consolidated Southwestern Cases, supra*, the rate of progression (although constant beyond 700 miles in the basic scale) actually results, in a measure at least, in an

increasing rate of progression where the movement is from or to points west or south of Zone II. Necessarily, therefore, the substitution of a diminishing rate of progression, as shown in the Appendix 10 scale, is all the more drastic in its effect upon the interterritorial rates from or to the southwest, and the western portion of Western Trunk Line territory.

These respondents find many things wrong with the Appendix 10 scale, one of which is the rate of progression. Such rate of progression is not properly based upon what the Commission has stated in the report in this proceeding as to what constitutes proper grading of a distance scale.

Appendix 10 scale starts at 40 cents for 5 miles and steps up to 70 cents at 100 miles, reflecting an increase of 30 cents between five and 100 miles. Beyond 100 miles such scale increases generally on a descending rate of progression, the descent in some instances being so great as to condemn such scale by use of the Commission's own statement. On page 214 the Commission states:

> "One of the criteria of a smooth progression in a rate scale is that each successive per cent of increase in the rate, at each 100 mile interval, for example, shall be less than the one immediately preceding, and also that the differences between successive per cents of increase shall not progress in an ascending order."

This statement is taken from the testimony of a Commission's representative, Witness Hobbs, page 7, Exhibit 5,

and reflects criticism of the rate of progression in the eastern class scale; Southern class scale and the Western Trunk Line Zones I, II and III class scales. By referring to such statement of the Commission's representative it is but reasonable to assume that the Commission adopts such criticism as a matter of principle.

Notwithstanding such criticism of the rate scale progressions, the scale prescribed by the Commission (Appendix 10) reflects the same infirmitives as criticized but to a greater extent.

In the table below we show the progression of the Appendix 10 scale, beginning at 5 miles and extending for 100 mile blocks from 100 to 2500 miles. The table also shows the percentage of increase in the rates for each successive 100 miles, as well as the difference between the successive percentages of increase:

	ICC Dkt. 28300 Scale	Actual Increase		
Miles	Rate	Amount	Per Cent	Difference
5	40	—	—	—
100	70	30	75.0	—
200	90	20	28.6	46.4
300	110	20	22.2	6.4
400	125	15	13.6	8.6
500	140	15	12.0	1.6
600	155	15	10.7	1.3
700	170	15	9.7	1.0
800	185	15	8.8	.9
900	199	14	7.5	1.3
1000	213	14	7.0	.5
1100	227	14	6.6	.4
1200	240	13	5.7	.9
1300	253	13	5.4	.3
1400	266	13	5.1	.3
1500	278	12	4.5	.6
1600	290	12	4.3	.2
1700	302	12	4.1	.2
1800	313	11	3.6	.5
1900	324	11	3.5	.1
2000	334	10	3.1	.4
2100	344	10	3.0	.1
2200	353	9	2.6	.4
2300	361	8	2.2	.4
2400	368	7	1.9	.3
2500	375	7	1.9	—

The figures in the above table have been worked out in the same manner as those shown on Sheet 214 of the report, which reflects a situation at only one point contrary to what the Commission concludes is an appropriate rate of progression in a distance scale. For example, the Eastern scale shows that the actual percentage increase in the rate at 800 miles over the rate for 700 miles is 7.4 per cent, which reflects a difference of three percentage points over

* Irregularities

the difference in the percentage increase between 600 and 700 miles. This has been recognized and indicated by the Commission on Sheet 214 as an irregularity. Contrasted with such a showing it will be observed that the scale prescribed in the instant proceeding, Appendix 10, reflects irregularities at seven different points in the scale, *i. e.*, 400, 900, 1200, 1500, 2,000 and 2,200 miles.

Such infirmities are inherent in any distance scale which reflects a descending rate of progression beyond the second 100 mile block and apparently can only be corrected by a less rapid rate of decline beyond the second 100 mile block to the point where it is appropriate to extend such scales at a constant rate of progress.

In the *Twenty-First Supplemental Report, Consolidated Southwestern Cases*, 205 I. C. C. 601, in comments regarding the "rate of progression in scales", the Commission made the following statement at page 646:

> "While in the very nature of their occurrence, we cannot agree that the terminal and line-haul costs per unit of distance remain practically constant as hauls increase in length, we are persuaded that the rates of progression in the present Southwestern scales would be inappropriate for the future and should be somewhat increased, particularly for the longer reaches."

In the statement below we show the original first-class scale prescribed in *Consolidated Southwestern Cases*, 123 I. C. C. 203, for application in the southwest, together with the rate of progression therein. This is the scale that the Commission found in the *Twenty-First Supplemental Re-*

port, supra, should be re-graded. Such scale was re-graded when the Commission prescribed the Zone III Western Trunk Line scale for application in Southwestern territory in lieu of the original first-class scale. In the statement we also show the Zone III scale and the rate of progression therein, which reflects a material increase in the rate of progression over 400 miles over the original Southwestern first-class scale.

Miles	Original 13535 Scale	Progression	Zone III Scale	Progression	28300 Scale	Progression
5	36	—	36	—	40	—
100	79	43	82	46	70	30
200	109	30	112	30	90	20
300	133	24	134	22	110	20
400	157	24	156	22	125	15
500	174	17	178	22	140	15
600	192	18	200	22	155	15
700	209	17	222	22	170	15
800	227	18	239	17	185	15
900	240	13	256	17	199	14
1000	253	13	273	17	213	14
1100	266	13	290	17	227	14
1200	279	13	307	17	240	13
1300	293	13	324	17	253	13
1400	305	13	341	17	266	13
1500	318	13	358	17	278	12
1600			375	17	290	12
1700			392	17	302	12
1800			409	17	313	11
1900			426	17	324	11
2000					334	10
2100					344	10
2200					353	9
2300					361	8
2400					368	7
2500					375	7

In the instant proceeding representatives of the Commission testified and demonstrated, at least to their satisfaction, that line-haul costs per unit of distance actually remain constant as the hauls increase in length. Notwithstanding such recognition and the findings in the *Twenty-*

First Supplemental Report, Consolidated Southwestern Cases, supra, increasing the rate of progression, the Commission has now reversed itself and has prescribed a diminishing rate of progression as the distance increases.

In the statement below we show the Appendix 10 scale, the rate of progression therein as compared with the Kas-Mo scale, Zone II WTL scale and the rates of progression therein (the Kas-Mo scale being prescribed in the original *Consolidated Southwestern Cases, supra*).

Miles	Kas-Mo Scale	Progression	Zone II Scale	Progression	28300 Scale	Progression
5	33	—	34	—	40	—
100	73	40	75	51	70	30
200	101	28	101	26	90	20
300	124	23	122	21	110	20
400	146	22	142	20	125	15
500	162	16	162	20	140	15
600	178	16	182	20	155	15
700	195	17	202	20	170	15
800	211	16	217	15	185	15
900	223	12	233	16	199	14
1000	235	12	248	15	213	14
1100	247	12	264	14	227	14
1200	259	12	279	15	240	13
1300	272	13	295	16	253	13
1400	284	12	310	15	266	13
1500	296	12	326	16	278	12
1600			341	15	290	12
1700			357	16	302	12
1800			372	15	313	11
1900			388	16	324	11
2000			403	15	334	10
2100			419	16	344	10
2200					353	9
2300					361	8
2400					368	7
2500					375	7

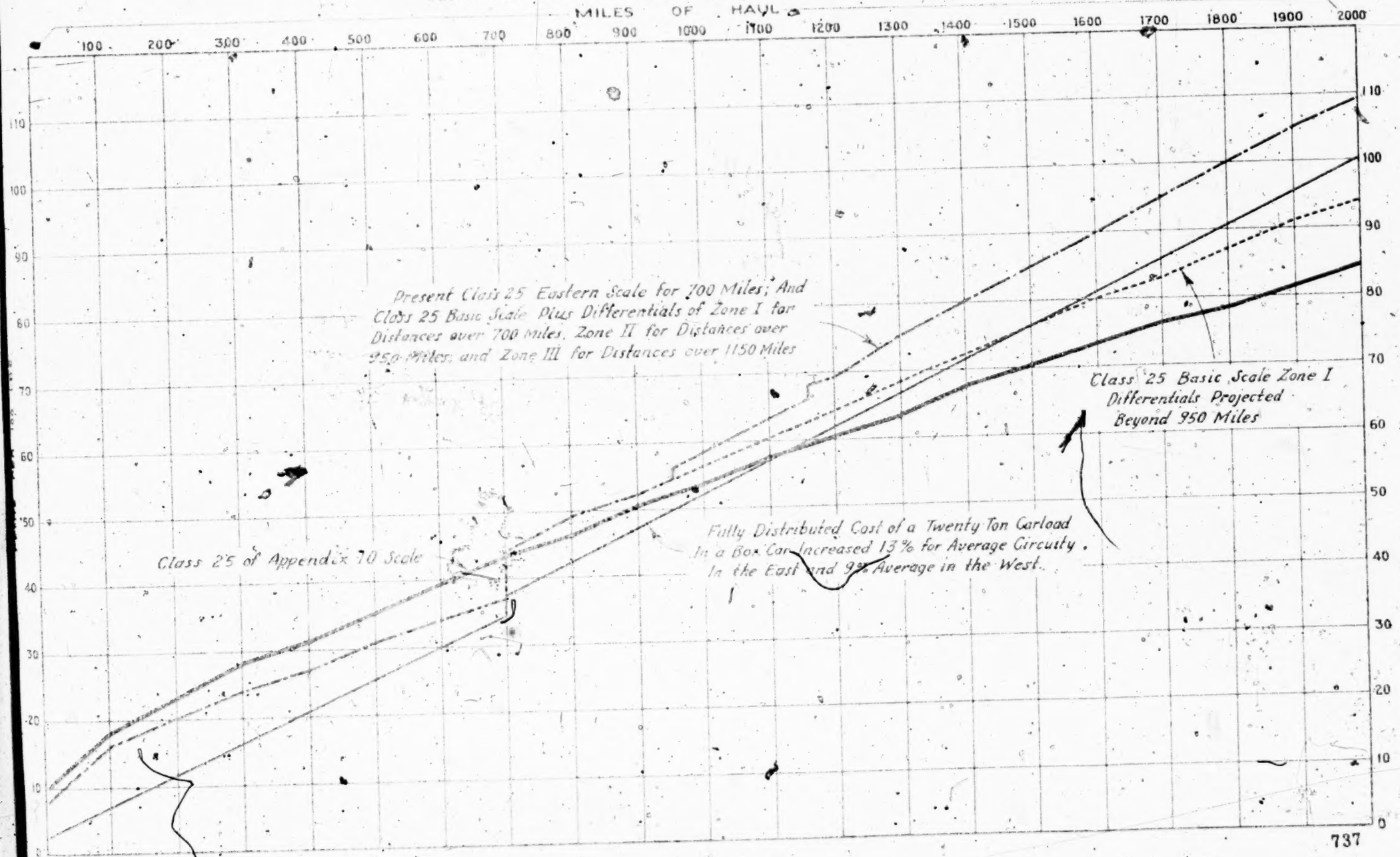
For many years prior to the decision in the *Western Trunk Line Class Rate Case, supra*, class and commodity rates between Western Trunk Line and Official territories were constructed on the basis of combinations over the

Mississippi River crossings, St. Louis and north thereof and Chicago. In that case the Commission, for the first time, prescribed through overhead class rates between Official and WTL territories, thus the increment for hauls west of the Mississippi River were substantially reduced as a result of the prescription of through overhead rates. The prescribed Appendix 10 scale decreases the increment for the hauls west of the Mississippi River to a much greater extent than the present prescribed class rate adjustment and, in fact, to such an extent that the increment is lower than would be justified by the Edwards' cost study. This is clearly indicated in the succeeding chart which shows the Edwards' fully distributed costs for a 20 ton carload in a box car compared with Class 25 rate under the Appendix 10 scale and the Western Trunk Line "U" scale as shown in the appendices in that report, 205 I. C. C. 595 at 709, for distances beyond 700 miles.

69

FIGURE 3

DR. EDWARDS' FULLY DISTRIBUTED COSTS OF A TWENTY TON CARLOAD IN A BOX CAR COMPARED WITH CLASS 25 APPENDIX 10 SCALE AND WITH PRESENT CLASS 25 EASTERN SCALE AND W.T.L. APPENDIX U SCALE BEGINNING AT A POINT 700 MILES IN EASTERN TERRITORY.



The chart, up to 700 miles, compares the Official territory scale with the Edwards' costs and the Appendix 10 scale Class 25. At 700 miles the chart indicates that there is a higher level of rates in Western territory than those prescribed for application in eastern territory and portrays the low increment for the western haul beyond 700 miles as contained in Appendix 10 scale. It will be noted that the Appendix 10 scale Class 25 goes below the fully distributed cost at a distance slightly over 1100 miles, thus reflecting the extremely low rate of progression in the prescribed scale (Appendix 10) for the longer distances. Such low rate of progression is further demonstrated in Appendices "B" and "C" hereof, which definitely indicate the low rate of progression for the longer reaches of the scale.

While This Investigation Does Not Contemplate the Inclusion of Commodity Rates or Exception Ratings It Necessarily Will Have an Effect on Such Rates.

While the Commission recognizes at Sheet 66 that "the investigation does not embrace • • • rates • • • which are determined by exceptions to the classifications or commodity rates" it does include, as shown on Sheet 8 "• • • all rates determined by ratings in the four classifications named above, irrespective of whether the ratings are stated under the regular numbered or lettered classes or as percentages of first class • • • ".

It is but reasonable to assume that the required new uniform classification to be established in accordance with

the findings under Part I of the decision will include both carload and less-carload ratings on each and every article now included in the classification, including those articles now moving at exception and commodity rates. In the *Twenty-Second Supplemental Report, Consolidated Southwestern Cases*, 211 I. C. C. 575, at 578, the Commission stated:

> "Respecting defendants' alternative objection that, notwithstanding the denial of a hearing, unless the existing commodity rates are reduced so as not to exceed the otherwise applicable class rates they will face our rulings that so far as they are higher such rates are prima facie unreasonable and require special justification, *it is enough to say that, where commodities should not in other than very exceptional circumstances take commodity rates higher than the class rates otherwise provided for application to them*, we are not at this time dealing with commodity rates as such." (Emphasis Supplied.)

The same principle has been followed in many other decisions.

It is, therefore, proper, we submit, to ascertain as nearly as possible the probable effect of the Commission's decision upon commodity rates, exception rates and particularly rates which were prescribed or approved by the Commission in former cases.

It is, of course, impossible to foretell what ratings will be provided in the new uniform classification on any particular article. However, in view of the reference to the Official classification ratings (Sheet 64) and exceptions

thereto in connection with findings in Part I of the decision, it is not improper, for the purpose of this discussion, to assume that the ratings in the new uniform classification on many articles will be no higher than now applicable within Official territory; and that if higher ratings are provided they will not be appreciably higher than now applicable in that territory. In this connection we direct the Commission's attention to Appendix "F", (3 pages), showing commodity rates prescribed by the Commission in the cases therein referred to, as compared with the rates that will result from application of the Appendix 10 first-class rates and the percentages for lower classes as prescribed.

It should not be understood that the classes selected for the purpose of this comparison are intended to suggest what class ratings on such articles should be in the proposed new uniform classification, such class ratings have been selected for the purpose of illustration.

Page 1, Appendix "F", shows rates on wool carloads as prescribed by the Commission in *Wool Rates Investigation, 1923*, 91 I. C. C. 235, as compared with Class 60, 55 and 50 that would result from application of Appendix 10 rates. Wool in the grease in bags or in machine-pressed bales is rated in Official and Southern classifications minimum weight 16,000 pounds, Rule 34, third class, or 70 per cent of first-class; in Southern and Western classification minimum weight 24,000 pounds, fourth class, or 55 per cent of first-class. In Official classification, by exceptions, wool

in the grease in bags or bales is rated Class 52, minimum weight 24,000 pounds, subject to Rule 34, and Class 70 K minimum weight 16,000 pounds, subject to Rule 34. This statement shows the extent that the prescribed class rates on Class 60, 55 and 50 are lower than the commodity rates prescribed by the Commission in *Wool Investigation, 1923, supra.*

Page 2, Appendix "F", shows the joint-line rates prescribed on packing house products carloads in *Meats and Packing House Products*, 136 I. C. C. 651, as compared with 37½ per cent and 35 per cent of first-class, as set forth in Appendix 10. Packing house products carloads are rated 37½ per cent in Official and Southern classification territories and fifth class, or 37½ per cent in Western classification. In Official territory, by exceptions, these commodities are rated Class 37-L which is the same or slightly below Class 35. In WTL territory, by exceptions, these commodities are rated Class 36. This statement shows that the prescribed Class 35 is lower in all instances than the prescribed commodity rates on these commodities and the same is true with respect to the prescribed Class 37½ rate except for distances over 1600 miles.

Page 3, Appendix "F", shows the situation as to rates on coal tar and pitch carload as prescribed in *Barrett Co. v. A. T. & S. F. Ry. Co.*, 172 I. C. C. 319, as compared with the prescribed rates, based on 25 and 22½ per cent of first-class (Appendix 10).

Coal tar and pitch in bulk in barrels or in tank cars is

rated Class 6 in Official, Class 10 in Southern and Class D in Western classification, which ratings are respectively 27½, 22½ and 22½ per cent of the applicable first-class rates. In Official territory, by exceptions, these commodities are rated 80 per cent of 6th Class, or approximately 22½ per cent of first-class. Paving or roofing coal tar and pitch in Official territory, by exceptions, are rated 70 per cent of 6th Class, or approximately 19.25 per cent of first-class. It will be noted that in all instances the prescribed 22½ per cent rates are lower than the prescribed commodity rates and that the prescribed Class 25 rates are approximately the same as the prescribed commodity rates, except for distances over 1400 miles where the prescribed Class 25 rates are lower than the prescribed commodity rates extended.

On Sheet 129 the Commission makes the following statement:

> "From the standpoint of the volume of traffic transported, class rates are the least important of the different kinds of rates . . . . . but the volume of traffic, particularly carload traffic on which class rates have applied has been substantially less for many years than that on which exception rates have applied."

On the same sheet the Commission shows that on carload traffic transported on September 23, 1942, 4.1 per cent of the carloads and 6.3 per cent of the revenue represented traffic handled on class rates, and 10.7 per cent of the carloads and 16.1 per cent of the revenue represented traffic handled on classification exception ratings.

From its decision it is but reasonable to assume that the Commission thought that even though severe reductions are required in the basic class rates no particular violence would be effected in the revenues of the western carriers because of the small proportion of carload traffic it found to be moving on class rates. On sheet 136, under the heading "Indirect Results of Proposed Revision," the Commission stated:

> "This means, of course, that we should take notice of, and in our ultimate conclusions accord proper weight to, the fact that an important percentage of both intra and interterritorial traffic is transported at exception or column rates which might be affected if class rates are substantially changed."

Just what consideration the Commission gave to the effect of its prescription of class rates as shown in Appendix 10 is impossible of ascertainment. If the Commission thought that no particular effect would result in the western carriers' revenues it is submitted that such conclusion is erroneous on its face for the reason that it does not take into account the revenues on traffic that is now moving on classification exception ratings and commodity rates, which revenues will be substantially reduced by reason of the fact that the reduced class rates will make lower rates than are now in effect as classification exception ratings and commodity rates. To put it another way, the actual rates resulting from the present classification exception ratings determined by the use of the present first-class rates will be higher than the new class rates determined by use of those prescribed in the instant proceeding. To illustrate—

the present 5th Class rates within Western Trunk Line and Southwestern territories are 37½ per cent of first-class. The interim basis requires a 10 per cent reduction in those rates which, if and when established will be lower than the present Column 35 rates. Therefore, on any commodities now rated 5th Class in western classification and on which the carriers have voluntarily established or have been required by the Commission to establish Column 35 rates, the rates on such commodities will be higher than the interim 5th Class rates as prescribed.

To carry the thought further, 5th Class in Official Classification territory is 35 per cent of first-class. If the Official classification is to be used as a pattern for the new uniform classification then it is reasonable to assume that all commodities now rated 5th Class, in both Official and Western Classification territories, will ultimately be rated no higher than 35 per cent of first-class. If that assumption is indulged in then the present rates on all commodities rated 5th Class in Western classification will be substantially reduced. Likewise, severe reductions will result in Southwestern and Western Trunk Line Zone III territories on those 5th Class commodities on which, at the present time, Class 35 applies as an exception rating. Further, the Class 35 rates resulting from the application of the Appendix 10 scale will reduce the present rates, on 5th Class commodities, which are rated Class 32½ in the classification exceptions on all distances over 50 miles; on all commodities now rated Class 30 in the classification exceptions for all distances above 65 miles;

on all commodities now rated Class 27½ in the classification exceptions for all distances over 100 miles and on all commodities now rated Class 25 in the classification exceptions for distances generally over 520 miles. Substantially the same results will follow as to commodities now rated Class "A", "B", "C", "D" and "E".

There is a substantial tonnage of commodities moving in Southwestern territory rated 5th Class in the Official and Western classifications, which move on exception ratings substantially below 5th Class rates. In the table below is shown a list of heavy moving commodities, which is not all inclusive. From such statement it can readily be appreciated that a 10 per cent reduction in the present 5th Class rates will reduce Western lines' revenues during the interim period. The permanent basis of rates, as shown in Appendix 10, will further reduce such revenues

Commodity	Present Official and Western Classification Rating	Present Southwestern Classification Exceptions Rating
Acetic Acid, in bulk in barrels; also in tank cars	5	30
Alcohols, other than alcoholic liquors	5	30
Soap and soap powders	5	25
Canned or preserved foodstuffs	5	28
Iron or steel rust preventing or removing compounds	5	30
Cocoa	5	32½
Rough, Rolled Glass, not bent	5	27½
Glass Bottles	5	27½
Window glass, not bent	5	32½
Houses or Buildings, portable, Iron or Steel	5	35
Insecticides or fungicides, Agricultural, Liquid	5	26
Iron and Steel Articles	5	32½
Paints and Paint Material	5	30
Iron or Steel Pipe	5	27½
Baking Powder	5	27½
Syrup, Corn	5	29½
Molasses	5	29½

Tariff Authority: SW 173-S D.Q. March I.C.C. 3659.

Therefore, the revenue on a large portion of traffic now moving on classification exceptions will be affected by the substantial reductions in the basic class rates, all of which the Commission appears to have overlooked or disregarded.

Indirect Result of the Commission's Prescribed Scale on Traffic Moving to and From the Territory Involved in the Instant Proceeding.

There is no logical basis for the prescribed interim rates or the permanent basis as shown in Appendix 10. On Sheet 266 the Commission makes the following statement:

> "It is clear that the method of distribution of the rate burden between types of traffic now observed in southern, southwestern, and western trunk-line territories has resulted in rates so high that they have prevented the free movement of traffic at the rates in issue. This result is fully proved by the fact that numerous lower exception and commodity rates which move the great preponderance of the traffic and produce the great preponderance of the revenues in those territories, have been established.
>
> "One of the principal contentions of southern and western respondents, and of certain industrial interests, is that the establishment of the eastern level of class rates in the South and West will require upward revisions of exception, column, and commodity rates in order that the railroads may recoup revenue lost from the reduced class rates. They show that many of the exception and column rates in the South and West are higher than the eastern level of class rates, and

contend that establishment of the eastern class-rate level in those territories would require reductions of those exception and column rates which are higher than the eastern class rates, thereby further reducing respondents' revenues. These contentions are directed against the establishment of the eastern class-rate level in the other territories, but are not an answer to the claim that the differences between the intra- and interterritorial class rates in and between the several territories are not justified by transportation conditions. Considerations of costs of service, consists of the traffic, distribution of the rate burden, and other factors usually given weight in determining lawful rates justify the conclusion that the class rates within southern, southwestern, and western trunkline territories, and between those territories and official territory are unjust and unreasonable, and that the class rates to official territory from the other territories are unduly prejudicial to such other territories and unduly preferential of official territory."

This finding warrants analysis. The Commission does not say that the extension of the eastern class scale to the other territories involved will not affect the exception and column rates but merely states that such result is "no answer" to the "claim" that transportation conditions do not justify the present differences in class rates between the various territories. It may reasonably be presumed then that the Commission impliedly agrees that the extension of the eastern class scale to other territories would affect the exception and commodity rates. That they would be affected by an extension of a scale approximately 15 per cent higher than the eastern scale seems apparent.

But by far the more important aspect of this finding is the failure of the Commission to describe how it determined that the prescribed scale will be just and reasonable for application in the entire territory east of the Rocky Mountains. First, the Commission finds that the "factors usually given weight in determining lawful rates" justify the conclusion that the present class rates are unjust and unreasonable. Presumably then the rates which the Commission would substitute for them must be, under the statutes, just and reasonable when judged by the "factors usually given weight in determining lawful rates." It is inconceivable that "considerations of cost of service, consists of traffic, distribution of the rate burden and other factors" could lead to the conclusion that the maximum reasonable rate between any two equi-distant points in the vast territories here involved must be the same. Consideration of the factors enumerated by the Commission can but lead to the opposite conclusion. Nowhere in the report does the Commission indicate how it arrived at its ultimate conclusions and upon what factors such conclusions are based.

On the many previous occasions on which the Commission has investigated class rates it has always recognized that there is a substantial difference in the various sections of the country in those factors which it enumerates in the findings in this proceeding. Those differing conditions have resulted in varied class rate levels in the different sections of the country, each established for the particular purpose of serving the needs of a particular

section of the country. It would be, indeed, very unusual if conditions in each section of the country had changed, more in some sections and less in others, but exactly no more or no less in each section so as to require exactly the same rate level in every section and territory. The record as made in this proceeding does not demonstrate that such phenomenon has taken place and it can only be concluded that by its action in this case the Commission is attempting to "equalize fortune, opportunities or abilities" contrary to the limitations placed upon it by the Interstate Commerce Act as interpreted by the United States Supreme Court in *Intersstate Commerce Commission* v. *Diffenbaugh*, 222 U. S. 42.

While this proceeding is limited to the consideration of rates applicable on articles moving at classification ratings the arithmetical relationship of rates is such that it must inevitably have its effect on other rates not specifically involved. In some instances, as will be hereafter demonstrated, the new class rates may actually result in rates lower than the present exceptions or commodity rates and in other instances the reduction in the class rates will be vigorously advanced as an argument in favor of reductions in exceptions or commodity rates.

The fact cannot be avoided that rates on the higher classes of traffic, generally the class rates, become the standard of measurement for other rates. The prescribed scale lowers the ceiling on rates in the western district with the inevitable result that other rates would, of neces-

sity, be affected, particularly those exception ratings and commodity rates which are close to the proposed ceiling.

It cannot be seriously asserted that the present revenues of the western carriers are excessive or that in the post war period those revenues, based on the present rate levels, will provide more than enough money to meet expenses, yet the immediate and direct effect of this decision is to reduce those revenues substantially and to threaten further with greater reductions at some indefinite time in the future.

Based on the 1944 volume of traffic and using the percentages found as a result of the traffic study shown in Exhibit 228, introduced in this proceeding, it is estimated that the interim adjustment would result in a loss of revenue to the western district carriers of approximately $10,000,000 on class rated traffic alone. A precise estimate of the revenue losses which will result from the application of the single scale of class rates in all of the territories here involved cannot be made because of the peculiar situation in which the carriers find themselves of being presented with a scale of class rates without knowing what classification is to be applied against them. The only thing known for certain by western carriers is that the level of the rates will be reduced below the level prescribed as the "interim" basis. Under such basis the 10 per cent reduction ordered is subject to a minimum scale, which later becomes the maximum. Where a 10 per cent reduction will put the present rates at or below the minimum no further

change need be made but where a 10 per cent reduction will leave the rates above the minimum, such rates, at a later date, must be still further reduced when the minimum scale undergoes the transformation by becoming the maximum scale as result of the permanent basis. This is particularly true of rates within the territory between the Missouri River and the Rocky Mountains and from and to that area. A few examples of the present and ultimate result of this decision on such rates are shown below.

Between	Miles	Present Rate[1]	10% Reduction[2]	Prescribed[3]	Percentage of Reduction
Chicago and Denver	1006	279	251	217	22%
Chicago and Fargo, N. D.	631	198	178	161	19%
Chicago and Alliance, Neb.	876	254	229	199	21%
Denver and Omaha	538	202	182	146	27%
Denver and Aberdeen, S. D.	765	257	231	182	29%
Denver and Alliance, Neb.	238	133	120	98	26%
Wichita and Kearney, Neb.	294	140	126	110	21%
Wichita and Alliance, Neb.	538	200	180	146	27%
Wichita and Fargo, N. D.	776	239	215	182	23%

The above table shows that the reductions in the rates themselves will, in some instances, be as much as 29 per cent. It is not known as yet what classification ratings will be used with the reduced rates but unless the uniform classification as finally adopted provides for substantially higher ratings than those now in effect it is elementary that the losses in revenues which the western carriers will sustain as a result of the permanent adjustment will be substantially in excess of those sustained during the period the interim adjustment is in effect.

1. Class 100, based on 17000-2 scale.
2. *Ad Interim* adjustment.
3. Docket 28300—Appendix 10 scale.

The foregoing relates only to traffic moving on class rates. However, the proposed adjustment will have a direct effect upon traffic now moving on exception and commodity rates. This will be particularly true in instances where the reduction in the class rates exceeds the spread between the exception rating and the classification rating. When the permanent basis is made effective further reductions are to be made in the class rates and it will be found that many of such rates will be actually lower than the exception rating unless, again, the uniform classification rating is made higher than the one now in effect.

Under the present classification basis in the western district the following illustrations show the rates which will result from applying the Appendix 10 scale compared with the present exception rates.

BETWEEN OMAHA AND DENVER.

Commodity	Present Exception Rating Percent 1st Class	Rate	Classification Rating Percent 1st Class	New Class Rate[1]
Abrasives, l.c.l.	55	111	70	102
Agricultural Implements, other than hand, K.D. l.c.l.	70	141	85	124
Drill bits, used, l.c.l.	60	121	70	102
Syrup flavoring compounds, l.c.l.	57	115	70	102
Ammunition, C.L.	45	91	55	80
Binder Twine, C.L.	35	71	45	66
Batteries, C.L.	37.5	76	40	58
Wallpaper, NOIBN, C.L.	40	81	45	66

Thus, in circumstances similar to the few examples shown above, the new class rates made by applying the proposed scale to the present classification ratings will, in each instance, be lower than the present exception rate.

1. Using Appendix 10 scale.

There will also be instances when the new class rates, with present classification ratings, will produce lower charges than under the present commodity rates. Only a cursory examination of the tariffs is necessary to discover that this situation will exist as to a great many rates.

An exception or commodity rate may not be unlawful simply because it happens to be higher than the class rate on the same article, yet it seems fairly obvious that the western carriers could not hope to maintain a large number of exception or commodity rates higher than the corresponding class rates. As a matter of fact the Commission has in innumerable cases held that a commodity rate which exceeds a class rate is *prima facie* unreasonable. This interpretation has been given by the Secretary of the Commission as a result of a recent inquiry, the Secretary's interpretation reading

> "Your first question is whether the Commission will continue to hold that a commodity rate which exceeds a class rate is *prima facie* unreasonable. I cannot answer this question definitely, except to say that there is no indication that the Commission will not continue to follow that principle."

Such interpretation appears at page 1715 of the Traffic World of June 30, 1945.

This being true the harmful effect of this decision upon the western carriers, caused by the reductions in class rates, will be aggravated by the forced reductions in exception and commodity rates even though those rates were specifically excluded from this proceeding.

The average revenue per ton mile of all Class I railroads in the United States, by districts, for the year 1939, as shown by an exhibit of record, is:

Eastern District	0.990 cents
Southern District	0.946 cents
Western District	0.947 cents

The figures shown above represent the average revenue per ton mile received for the transportation of all traffic at the present rate levels maintained in the various territories and between those territories. They include revenue derived from the traffic moving at higher rates than the average, as well as traffic moving at rates which provide revenue below the average. It is obvious that any reduction in rates higher than the average must result in a lowering of the average with the consequent loss in total revenue.

No one can suggest, in fairness, that the revenues received by the western railroads on the present rate levels are excessive or that they will be in excess of that required to pay expenses of the railroads in the post war period when the new class rates are prescribed to be in effect.

The uniform class scale prescribed in this decision, together with the depressing effect which it will have on other rates must, necessarily, result in substantial reductions in revenue and a lowering of the average revenue per ton mile unless such losses are in some manner recouped, possibly by increases in the level of the lower rated commodities which constitute the bulk of the traffic in the west-

ern district, such as agricultural products, including livestock.

The Effect of the Interim Basis, as Well as the Permanent Basis, Upon Rates to and From Mountain Pacific Territory on the One Hand and the Territory East of the Rocky Mountains on the Other Hand.

The 10 per cent reduction in the class rates in the territory involved in this proceeding will, of necessity, require a readjustment of the class rates to and from Mountain Pacific territory and will result in substantial reductions in such rates.

At sheet 242 of the report the Commission seems to recognize that the establishment of the uniform classification will necessarily make changes in the class rates "within, to and from Mountain Pacific territory."

The establishment of the interim rates will likewise result in changes to and from Mountain Pacific territory.

We show in Appendix "G" hereof, (3 pages), the present class rates compared with the rates prescribed in Appendix 10 which clearly indicates the necessity for making adjustments in the Mountain Pacific class rates. While we appreciate that the decision does not require any changes in the class rates to and from points in Mountain Pacific territory it will not be possible for the western railroads to maintain the present rates because of the unreasonable spread that will result from the prescribed

rates to the western border points of the territory here involved and the present rates to points beyond.

To Denver, Colorado from New York City the present first-class rate is 385 cents and to Salt Lake City, Utah, 516 cents, a difference of 131 cents for an additional difference of 506 miles. The prescribed first-class rate from New York City to Denver is 347 cents; the spread in the rates will be 169 cents.

The present first-class rate from New York City to El Paso, Texas, is 460 cents and to Los Angeles 611 cents, a difference of 151 cents for a difference in distance of 867 miles. The prescribed rate to El Paso is 414 cents, therefore the difference will be increased to 197 cents.

The present first-class rate from New York City to Montline, N. D. is 374 cents and to Seattle, Washington 611 cents, a difference of 237 cents for an additional distance of 1135 miles. The prescribed interim first-class rate to Montline is 337 cents, resulting in the difference being increased to 274 cents. A great many other comparisons can be made from Appendix "G" as to situations from New York City, Pittsburgh, Detroit, Chicago and Kansas City. It is clear from such illustrations that the present rates to and from Mountain Pacific territory cannot be maintained if and when the interim rates become effective, therefore, necessary readjustments will result in substantial reductions in the rates to and from Mountain Pacific territory.

It seems equally clear that the establishment of the permanent basis, as shown in Appendix 10 of the report,

will require readjustment of class rates to and from and perhaps within Mountain Pacific territory. Further, many commodity rates will likewise have to be readjusted.

Until the exact ratings have been determined for uniform classification throughout the entire United States it is impossible to make any accurate estimate of the effect of the permanent rates prescribed for application in the territory east of the Rocky Mountains. However, it is certain that the permanent rates will result in substantial reductions in many class and commodity rates, as well as in exception ratings. For this reason it is impossible to make any accurate estimate of the effect of the establishment of the prescribed basis of permanent rates in the territory involved in the proceeding in which they are to be applied upon class and commodity rates. For the same reason it is impossible to make any estimate as to the revenue effect within, to and from Mountain Pacific territory but comparisons can be made which clearly show that readjustments of the rates in Mountain Pacific territory will have to be made and that such readjustments will result in substantial reductions in the class rates as well as in exception and commodity rates.

With the information as to the percentage relationship between classes which will be adopted for uniform application, we show in Appendix "G" the present class rates to border-line points, together with the present percentage relationship to first-class which are compared with the Appendix 10 rates, using present Western Trunk Line per-

centage relationships; also rates based on 40 per cent and 35 per cent of the first-class rates; also the present class rates to points beyond the western border of the territory here involved compared with the Appendix 10 rates extended beyond the western border but increased 15 per cent for the haul in Mountain Pacific territory.

The present class rates to Utah common points were prescribed in *W. H. Bintz Co.* v. *Abilene & S. Ry. Co.*, 216 I. C. C. 481, and to Eastern Montana in *Great Falls Traffic Assn.* v. *Chicago, B. & Q. R. Co.*, 226 I. C. C. 467; 235 I. C. C. 459.

The Commission recognized in the *Sixth Supplemental Report* in Docket 17,000, Part 2, 204 I. C. C. 595, 609, that the class rates it had previously prescribed in the original proceeding, 164 I. C. C. 1, would seriously affect rates to and from Mountain Pacific territory.

In *Consolidated Wagon & Machine Co.* v. *Baltimore & O. R. Co.*, 210 I. C. C. 375, the Commission prescribed rates on agricultural implements from eastern origins to destinations in Utah and Idaho 40 per cent of hypothetical first-class rates, arrived at by adding 15 per cent of the Zone III scale for the distances in Mountain Pacific territory. The same basis was prescribed in the *Bintz Case* to Utah common points and in the *Great Falls Case* to Montana destinations as far west as Harlowton, Mont.

In Docket No. 28978 and related cases, *George A. Hormel & Co., et al.*, v. *A. T. & S. F. Ry Co., et al.*, (mimeographed) decided June 5, 1945, the Commission prescribed

rates on packing house products from eastern origins to the Pacific Coast on basis of extending the Docket No. 2595 scale, *Meats and Packing-House Products*, 136 I. C. C. 651; 147 I. C. C. 330; 156 I. C. C. 299, prescribed for application within the southwest, increased 15 per cent for the haul in Mountain Pacific territory. In its decision the Commission stated at Sheet 34, referring to its decision in 210 I. C. C. 375 and 216 I. C. C. 41:

> "The reports in these two latter cases contain complete discussions of the principles underlying the proper relations of rates as between the southwest, middlewest, and Mountain-Pacific territories, and of our prior decisions dealing with that question. . . .
>
> "The last two above mentioned cases show that we are now of the view that reasonable rates in Mountain-Pacific territory ordinarily should not be more than 15 per cent higher than reasonable rates in the southwest."

Because the Commission adopted this basis for extending rates into Mountain Pacific territory, *i. e.*, 15 per cent higher than in the territory east of the Rocky Mountains, the rates shown in Appendix "G" reflect the Appendix 10 rates, increased 15 per cent for the haul in Mountain Pacific territory. On such basis the first-class rate of 516 cents from New York City to Salt Lake City would be reduced to 389 cents. To Los Angeles and Seattle the present first-class rate of 671 cents would be reduced to 439 cents.

Innumerable examples are shown in Appendix "G", all of which indicate the drastic reductions that will result in the class rates to and from Mountain Pacific territory

in the event the Appendix 10 scale, as adjusted for the hauls in Mountain Pacific territory, are made effective to and from that territory. Necessarily, the reductions will be substantially greater if the class rates to and from Mountain Pacific territory are not inflated 15 per cent.

Class and commodity rates to and from inter-mountain territory are definitely related to the rates prescribed in *Western Trunk Line Class Rates, supra.* The establishment of the rates prescribed by the Commission to the territory herein involved will compel reductions in rates to and from Mountain Pacific territory and will break down the entire Mountain Pacific and Transcontinental rate adjustment.

To indicate the drastic reductions in the first-class rates which will result from the establishment of the permanent basis inflated 15 per cent, we show in Appendix "H" the result to Denver, El Paso and Montline, which are actual reductions. The situation to other destinations shown are based on the constructive first-class rates. For example—from New York City to Denver the reduction is actually 61 cents, or 15.8 per cent; to Los Angeles the reduction would be 172 cents, or 28.2 per cent.

Class rates to and from Mountain Pacific territory were not involved in Docket No. 28300. Nor will the record as made therein, support a finding that the present class rates from or to that territory are, in any way unlawful.

One of the most important transcontinental commodity rates is that applicable on machinery, as shown in Item 1650 of Agent Kipp's I.C.C. 1507, particularly the rates subject to a minimum weight of 40,000 pounds and which apply as far east as Salt Lake City under the intermediate application in the tariff. The classification rating on machinery in western classification is Class A (45 per cent of first class) and in Official 40 per cent of first class. While we do not know what basis will be adopted for uniform application throughout the country, in the proposed uniform classification, but to indicate the effect of the rates prescribed in the instant proceeding we show in Appendix "I" carload rates on machinery to Salt Lake City and Los Angeles from representative eastern origin points compared with 45 per cent and 40 per cent of the first-class rates under the Appendix 10 scale, as is set forth in Appendix "G". To illustrate—the present rates from New York City are 232 cents, 24,000 pounds minimum; 213 cents, 40,000 pounds minimum. 45 per cent of the Appendix 10 scale will result in a rate of 175 cents and 40 per cent of the Appendix 10 scale will result in a rate of 156 cents. The present rates to Los Angeles from New York City are 254 cents, 30,000 pounds minimum; 213 cents, 40,000 pounds minimum. 45 per cent of the first-class Appendix 10 scale would be 198 cents and 40 per cent would be 176 cents.

We have heretofore referred to the Commission's decision in *Consolidated Wagon & Machine Co.* v. *Baltimore & O. R. Co., supra.* In that case the basis prescribed

by the Commission on agricultural implements (other than hand) from Western Trunk Line and Official-Illinois origins to destinations in Utah and Idaho was 40 per cent of first-class rates constructed by adding 15 per cent to the Zone III Scale for the distances in Mountain Pacific territory. While the classification rating on agricultural implements in Official territory is 40 per cent of first class, and in western territory 45 per cent of first-class the classification exception is 40 per cent of first class.

Appendix "J" shows the situation that would result on agricultural implements. This statement shows the present carload rates compared with 45 per cent and 40 per ce of first-class rates prescribed in Appendix 10 extended into Mountain Pacific territory, as shown in Appendix "G". It will be noted that the extension of such scale would result in substantial reductions in the present rates on agricultural implements to Mountain Pacific territory.

In normal times automobiles constitute a large volume of traffic destined to Mountain Pacific territory. Appendix "K" shows the present commodity rates on automobiles to Denver, El Paso and Montlite and to destinations west thereof. We also show the present first-class rates to the same destinations and 75 per cent of first-class, which is the basis recently prescribed by the Commission in Docket No. 28190, *New Automobiles in Interstate Commerce, supra*, and Class 100 of the Appendix 10 scale and 75 per cent thereof. As will be noted, the present automobile rate to Denver will be reduced from 229 cents to 188 cents

and if the Appendix 10 scale is extended into Mountain Pacific territory the rate to Salt Lake City will be reduced from 328 cents to 247 cents, and to Los Angeles from 450 cents to 298 cents.

The foregoing, with respect to Appendices "I", "J" and "K" as to reductions in carload traffic, are merely illustrative. There are many others that could be shown.

The present rates to Transcontinental territory on machinery and agricultural implements are depressed by reason of Panama Canal competition and apply in all instances to intermediate points as maximum rates. For example—the same rate applies to Los Angeles and Salt Lake City on machinery 40,000 pounds; from New York City 213 cents; Pittsburgh 196 cents and Detroit 187 cents. The same rate applies on agricultural implements to Los Angeles and Salt Lake City minimum 44,000 pounds; from New York City 187 cents; Pittsburgh 171 cents; Detroit 163 cents and Chicago 154 cents.

Not only will reductions in carload rates result from the extension of the Appendix 10 scale in Mountain Pacific territory, as shown in Appendix "G", but less-carload rates as well will be affected. The reductions in the less-carload rates on commodities such as boots and shoes, and hosiery, as described in Item 3995 of Agent L. E. Kipp's I.C.C. 1507; clothing as described in Item 4000 of the same tariff, from Chicago, New York City, Kansas City, Mo. to Los Angeles and Salt Lake City are shown in Appendix "L". It will be noted therefrom that the less-carload rate

on boots and shoes from New York City to Salt Lake City would be reduced from 495 cents to 389 cents and the present rate to Los Angeles would be reduced from 495 cents to 439 cents. Again these are merely examples of a vast number of less-carload rates which will be reduced by an extension of the Appendix 10 scale to Mountain Pacific and Transcontinental territories.

It is not enough to say that Mountain Pacific and Transcontinental territories are not involved in the instant proceeding when history and experience dictates that rates to such territories are influenced by the rates in Southwestern and Western Trunk Line territories, and just as sure as the rates are reduced as a result of the Commission's decision in the instant proceeding, the interim as well as the permanent basis, it will have the effect of reducing rates to the territory west of that involved in this proceeding, all of which will result without an opportunity being afforded the carriers in Mountain Pacific and Transcontinental territories to present evidence as to the reasonableness and otherwise lawfulness of the present rates.

If the Commission insists upon the rates as prescribed to the territory involved then the effective date of the order should be postponed, the proceeding reopened and enlarged so as to include the class rates to, from and within Mountain Pacific territory. To do otherwise will force the western railroads to substantially reduce their present rates to and from such Mountain Pacific territory, notwithstanding there is no evidence before the Commission

to show that the present rates are unreasonable or otherwise unlawful.

The Commission's Decision and Order Are Erroneous in That They Do Not Accord Western Railroads Reasonable and Proper Rates Under the Commission's Own Findings in This Proceeding, Particularly as to Relative Costs.

The scales of rates to be applied between Official territory and the territory involved in the western district and within the west, east of the Rocky Mountains, are unlawful and are arbitrary in that they are too low for the services rendered in the west and, further, because they do not accord rates to western railroads as required under the evidence adduced of record in view of the actual and relative transportation conditions.

Great reliance has been placed by the Commission in this case upon evidence as to costs and relative costs introduced by their analysts. A large part of the report, pages 138 to 161, is devoted to such evidence. Yet in its conclusions the Commission fails to provide for the rate differences required by such evidence and in fact practically ignores the relative costs as found by its own representatives.

The western railroads do not subscribe to the method, formulas and conclusions reached by the Commission's analysts and we take the position that costs are not the only element to consider in fixing rates, especially class rates which cover a wide range of commodities with vary-

ing values and transportation characteristics. We urge that the Commission at least accord to them, as minimum, rates sufficiently above those prescribed in the east so as to reflect the higher costs in the west as found by their own representatives.

On page 161 of the report it is said, as to the relative costs of handling less-than-carload traffic, that:

> "Costs in the west are 27 per cent higher than in the east, including New England but excluding Pocahontas. *Less than carload traffic, as a whole is carried as a deficit in all territories, except possibly in the south.*" (Emphasis supplied.)

On the same page the conclusion is reached that the overall costs in the west range from 5 per cent to 18 per cent higher than in the east. Notwithstanding the added costs as found by the Commission, west over the east, the scale of first-class rates prescribed is to be applicable in all territories, thus the substantially higher costs found to exist in the west are entirely disregarded.

The reduction of class rates in the west and for that part of the interterritorial haul in the west is clearly unlawful and arbitrary and in violation of the Constitution in that in spite of the findings (Sheet 161) that less-than-carload traffic is, as a whole, handled in the west at a deficit, rates are to be reduced which will still further increase the deficits for the west of $34,348,274 or $26,240,171, depending on the basis considered, as shown on Sheet 155 of the report. This deficit is the largest for any territory shown, although the l.c.l. revenues for the west were over $18,-

000,000 less than in the east. The operating ratio on l.c.l. traffic in the west was 138.6 per cent and in the east 124.4 per cent (divide Line 5 by Line 7, table on Sheet 55). The l.c.l. revenues in the west were actually lower than the out-of-pocket costs (Line 1, table on Sheet 155) without taking into consideration the constant expense related solely to l.c.l. traffic (Line 2, table on Sheet 155) or the collection and delivery payments and allowances (Line 4, Table on Sheet 155).

Both the so-called interim as well as the permanent basis of class rates prescribed will greatly increase this deficit in the west. In other words, the reduced basis ordered by the Commission is confiscatory. This is established on the face of the Commission's own decision. Such a result is contrary to law and should not under any circumstances be permitted to stand.

From the comparisons shown in Appendices "B" and "C" it must be apparent that the Commission has not given consideration to the startling effect of the rates prescribed. What testimony of record or the background of this case warrants a prescription of rates, as is shown in the Commission's report, is not made apparent by the majority. Certainly there has been no change in transportation conditions or the methods of handling traffic or operating railroads that would justify or require such a finding and order. If there are such facts of record and background in this case that would justify such finding and order, the majority does not explain them.

The Commission does not point out what changed conditions warrant the discarding of principles followed for over fifty years in rate regulation upon which the country, as a whole, has relied. Certainly those concerned with transportation and the users thereof are entitled to know upon what evidence the Commission relies for the drastic changes in the principles and precedents here made. The majority does not state them. Shippers and receivers, as well as the railroads, are entitled to know upon what provisions of the Act the Commission relied when it ordered substantial increases in some parts of the country and drastic reductions in others, as compared with class rates it had fixed recently, after exhaustive hearings and investigations. The Commission should also point out the evidence of record showing a violation of the provisions of the Act relied upon. Sufficient evidence as to Section 3 violations as pointed out by Commissioner Porter, (Sheet 287) is certainly lacking in the majority report.

The Commission in this case indicates that the carriers' revenues should be preserved (Sheet 59). Western carriers are at a loss to know how their revenues are to be preserved by the prescription of reduced class rates which will considerably increase the deficit the Commission finds to result from their handling of l.c.l. traffic under present rates. Nor do western carriers understand the record bases for the finding (Sheet 275) "from those returns and the whole record we find and determine that the revenue needs of the carriers in Official territory, with respect to their class rate traffic, are greater than is the case as to class

rate traffic of carriers in the other territories described" in the face of the showing made by the table on Sheet 155 that the deficit of western lines on their smaller volume of class rate traffic is both actually and relatively greater than that in the east. Even if the finding, as last above quoted, was correct it might warrant an increase in the eastern class rates but it certainly does not warrant a reduction in the western class rates. The "will of the wisp" of uniformity is not worth the wrecking of the western railroads and the manufacturers in the west who try to compete with the volume production and heavy local consumption of the east.

The action taken by the majority completely disregards the competition which producers in the west must meet in their own territory from producers in the east.

Eastern manufacturers have available to them the services of steamer lines serving Atlantic and Gulf ports; also Pacific ports through the Panama Canal. Some large eastern firms have their own steamer lines.

The order in the instant proceding will reduce rates from the east to the west which will increase the ability of eastern producers to compete in the west with western producers. True, the rates in the reverse direction are also reduced but that is little compensation to the western producers who must ship long distances to dispose of the surplus products that their own comparatively small local consuming territory can absorb.

This record reveals that the reason for the complaint from certain people in the south and in the west was that

the producers in those territories could not compete for the sale of products in Official territory. Under what theory of reasoning will it help build up industry in the south and west to give eastern producers lower rates to the south and west? To the contrary it will greatly retard the industrial development of the south and the west because eastern industry will still have the advantage in reaching the hereby densely populated, heavy consuming areas which surround them and will be given a lower basis of rates to dispose of their surplus production in the more distant south and west. Western industry is not in the fortunate position which will permit it to accept less profit on surplus goods sold in the east because it does not have the extreme advantage which its eastern competitors have of a heavy consuming, local territory.

The decision clearly recognizes a higher cost in the west than in the east. The Commission does not explain why it ignores that difference in cost. To ignore that difference in cost in making rates on the very highest rated and most valuable traffic and that which should contribute most to the overhead, particularly in the western territory where a very large percentage of the total traffic is low-grade raw materials, which the Commission has often said cannot and should not pay relatively to the maintenance of the transportation plant, is obviously an error in judgment.

In *Rubber Assn. of America* v. *Akron & B. B. R. Co.*, 174 I. C. C. 79, 85-86, it was said:

> "It is self-evident that rates cannot be made with reference to value alone. Yet value is a factor of major

importance. Many low-grade commodities must be given low rates in order to permit them to move. If such traffic is to move as it must, and carriers at the same time are to earn sufficient aggregate revenue to enable them to perform their services and earn a fair return upon the value of their property, high-grade traffic must be subjected to rates which are in some degree commensurate with commodity values. Stated somewhat differently, the value of a high-grade commodity must be given a greater significance than lies in the mere extent to which it affects the risk assumed by the carriers in transporting it."

If agricultural products and livestock, for example, are to have the benefit of low rates in order to permit them to move, other traffic, particularly class rate traffic, should move on rates which are at the very top of the zone of reasonableness. Class rates as prescribed in this proceeding are certainly not in that category. This is another long standing principle of rate-making which the Commission ignores and discards by the decision in this case.

Mathematical Uniformity in Class Rates Can Be Achieved by Cutting Down or Stretching Out the Present Varying Scales to Fit a Single Scale.

It does not necessarily follow that the reductions in rates proposed will promote industrial development in the west. A similar experience in the State of Kentucky did not meet with much success. What happened there is reviewed by the Commission in this report. At Sheet 208 the Commission states:

"Kentucky was included within Southern territory in the southern revision. Subsequently, in *Common-*

wealth of Kentucky v. *Ahnapee & W. Ry. Co.* (1935), 213 I. C. C. 297, we accorded it treatment different from that in the south generally with respect to class rates to and from Official territory. The effect of that decision was to reduce the class rates between interior Kentucky points and Official territory to a basis approximately 15 per cent higher than the basic eastern scale."

It is further stated that other rates between points in Kentucky and Official territory were such that the average between representative points was 9.8 per cent in excess of the rates for corresponding distances in Official territory. In the proceeding referred to by the Commission, all the familiar allegations were made on behalf of the State of Kentucky as are made in this proceeding. It was particularly stressed that the small amount of manufacturing in interior Kentucky was due to the unfavorable rate structure. Presumably the adjustment prescribed for Kentucky should have resulted in the expansion and growth of industry in that state if the philosophy of the proponents in the instant proceeding, which has been followed by the Commission, is correct. However, the Commission now finds, at Sheet 209, that:

"Since our decision in *Commonwealth of Kentucky* v. *A. & W. Ry. Co., supra*, (decided December 9, 1935), *when interstate class rates into and from Kentucky were reduced to a basis slightly higher than the official level, the industrial development in Kentucky has been less than in Tennessee, in which the higher southern level of class rates has applied during that period.*" (Emphasis supplied.)

Somewhat similar results may be expected from this case because there is little likelihood that the simple expedient of putting all class rates on a single scale will promote industrial development in the west. In fact there is more than a reasonabe possibility that it may have the opposite effect.

One of the factors upon which the Commission places great reliance is that the prescribed scale wil reduce rates between the west and the east thereby helping the western manufacturer, or the new manufacturer, who is supposed to locate in the west because of the alleged favorable freight rates, to compete with the manufacturers in Official territory for business within Official territory. However, since the rates will apply in both directions the ultimate result of the permanent adjustment will be to reduce rates from Official territory to points in the western district by substantial amounts, thus permitting the eastern manufacturer to provide stiffer competition for the western manufacturers in what would ordinarily be considered their natural markets. A few examples will illustrate this point, using the proposed Class 100 rates as a basis.

To Alliance, Neb.

From	Reduction
Denver	35 cents
Chicago	55 cents
Pittsburgh	48 cents
New York	49 cents
Detroit	51 cents

To Witchita, Kansas.

Kansas City	27 cents
Chicago	39 cents
Detroit	30 cents
Pittsburgh	25 cents
New York	21 cents
St. Louis	38 cents

To Aberdeen, S. D.

Fargo	18 cents
Minneapolis	25 cents
Chicago	34 cents
Detroit	33 cents
Pittsburgh	25 cents
New York	29 cents
St. Louis	36 cents

To Kearney, Neb.

Omaha	21 cents
Chicago	33 cents
Detroit	27 cents
Pittsburgh	20 cents
New York	19 cents

The reductions shown are based on the present Class 100 rates and a cursory study of the examples is all that is necessary to show the effect the prescribed scales will have. The new rate from Denver to Alliance, Neb. for example, will be 35 cents lower than the present rate but the new rate from Detroit, Mich. will be 51 cents lower, thereby reducing the spread in the present rates by 16 cents to the advantage of Detroit.

In the few instances the spread between the rates in points in Official territory and points in Western Trunk Line territory will be increased in favor of the Western

Trunk Line point but in many such cases that advantage may prove illusory because with the establishment of lower truck compelled scales for the shorter hauls the actual spread between the present rates will be greater than the spreads between the maximum class 100 rates. In such cases the decision will result in slight, if any, reductions for the short hauls but will result in maximum reductions for the longer hauls. The practical result will be that the Official territory shipper will get the benefit of the full reduction while the shipper at the nearby point will get only a slight reduction or no reduction at all.

Mathematical uniformity, as stated in class rates, can be achieved by cutting down or stretching out the present varying scales to fit a single scale. However, the victims of such a process may find themselves in the same unfortunate position as the luckless recipients of the hospitality of Procrustes who accommodated all of his guests to his only bed by lopping off or stretching them out to the right length.

The Commission Fails to Consider the Needs of Railroads in the Post War Period.

It was testified by Witness Parmelee in *Ex Parte* 148, October 23, 1944, pages A-2840 to 2843, inclusive that:

> "The railroads have absorbed the increased traffic largely by loading cars and trains more heavily than ever before, by running cars and locomotives more miles per day than ever before, by reducing unserviceable cars to the lowest ratio in history, by retaining

cars and locomotives in service beyond their economic life and by draining surplus car and locomotive pools.

"While these emergency measures have enabled the railroads to handle the war traffic and some will be continued to a degree in the post war period many of them are temporary expedients and will be modified at the war's end in the interest of adequate and efficient transportation service.

"Prior to the war the greatest amount of work the railroads ever obtained from the average freight car was in 1937 when car miles per serviceable car day averaged 36.6 miles and net ton miles per serviceable car day averaged 625 ton miles.

"During the first eight months during 1944 these averages were 52.3 car miles and 1,123 net ton miles per car day, increases of 43 and 80 per cent respectively.

"If one-quarter of this gain in car efficiency attains through emergency measures and under more favorable traffic volume conditions are retained in the post war period present freight car ownership will be barely adequate to handle a level of freight traffic equivalent to that of 1929.

"If freight car performance in the post war period is less than 20 per cent greater than that of the best pre-war year additional cars will be needed to handle a traffic volume equivalent to 1929. The same general comments may be made with respect to locomotives but with some variations in the figures.

"If we assume that it will be necessary to keep railroad ownership of freight cars and locomotives at no more than present levels in order to handle post-war traffic adequately and efficiently, replacement needs in the early post war years may be indicated as follows:

"During the three war years, 1942 through 1944,

railroads have retired and permanently withdrawn from service about 100,000 freight cars and about 2,000 locomotives. At such retirement rate, it would require more than 50 years to replace all freight cars in service at the beginning of 1942 and more than 60 years to replace all locomotives.

"Obviously these annual retirement rates would be too low, particularly in view of the heavy use to which equipment has been subjected during the war period.

"If we assume a 30 year renewal span for freight cars, and a 40 year renewal span for locomotives, which is a longer span than is indicated by current depreciation rates on locomotives, then retirements in the last three years have fallen short by about 70,000 cars and by about 1100 locomotives.

"If we assume that the indicated lag in replacements wil be made up in the first five years of the post war period, it would be necessary to retire and replace 14,000 freight cars per year, merely to make up the lag. To this figure should be added current retirements of 1/30th of the ownership, which would be 56,000 cars per year, or a total of 70,000 cars annually.

"Similarly, replacements of locomotives to make up the lag would be 220 units per year, and current retirements and replacements would be 1/40th of the ownership, or about 1,050 per year, a total of 1,270 units annually.

"Thus, a program of 350,000 new freight cars and 6,350 new locomotives, would represent minimum requirements over the first five post war years. This would be an average of 70,000 new freight cars, and 1,270 new locomotives per year, or an annual outlay of $300,000,000 or more.

"While it is much more difficult to indicate prospective capital expenditures for passenger train cars,

$50,000,000 per year over a five-year period would seem conservative, in view of the extremely heavy use of such equipment during the war period.

"Over a long period of years capital expenditures for equipment and for roadway and structures will be about equal.

"The average for equipment over the past 22 years being $258,000,000 per year and for roadway and structures $269,000,000 per year.

"If this ratio should be maintained in the first five post-war years, and if expenditures for new equipment should be approximately $350,000,000 per year, another $350,000,000 per year would be required for improvements to roadway and structures, or a total of $700,000,000 per year.

"On the basis of past experience, as I have outlined, the carriers would need a net railway operating income in the neighborhood of a billion dollars a year in order to support such a program of capital improvements."

While the above figures are for the United States as a whole it is obvious that the expenditures for capital improvements in the post war period for the western railroads will be a tremendous sum of money which certainly cannot be realized if the Commission insists upon reducing rates on traffic, such as class traffic, which will force reductions in rates moving on exceptions or commodity rates unless the rates on raw materials, such as products of agriculture, including livestock, are increased so as to permit the western railroads to earn net revenues which will permit them to rehabilitate their properties so as to provide an adequate and efficient transportation service.

Conclusion.

The western railroads have given thorough and matured consideration to the Commission's decision in this investigation and have included in this petition the major objections to the report, and aver that the matters contained herein do not justify the conclusions reached and will result in a serious reduction in their revenues, not only during the interim period, which will amount to approximately $10,000,000 per year, but the permanent basis as prescribed will further reduce their revenues in an alarming amount. Not only will our revenues be reduced as to class rate traffic but traffic moving on exception and commodity rates will be reduced.

The majority has erred in not following the principles that have heretofore guided the Commission in its determination of reasonable and otherwise lawful rates. They have labored under a misapprehension as to the consist of traffic in the west as compared with that in the east. They have entirely cast aside the increased costs of handling traffic in the west as compared with that in the east. They have misconstrued the amendments to the Transportation Act of 1940 in that such amendments have not changed in any manner whatsoever the considerations that must be given in determining reasonable and otherwise lawful rates. Nor has the majority considered the effect that the rates as prescribed in this proceeding will have on rates to Mountain Pacific and Transcontinental territories.

No explanation has been made by the Commission why it was necessary for it to depart from the customary standards usually employed in the fixation of reasonable and otherwise lawful rates. Nor how it can legally revise practically a nationwide rate adjustment based on evidence which, generally speaking, pertains only to 4.1 per cent of the carload movement but which necessarily affects 95.9 per cent of the carload movement in the United States, without consideration of the less-carload movement which likewise will be affected. Undoubtedly there are many facts within the Commission's knowledge which have been permitted to enter into the considerations given by the Commission but which were not put in evidence. If so, such considerations will not support the order as entered, *The Chicago Junction Case*, 264 U. S. 258; *Interstate Commerce Commission* v. *Louisville and Nashville Railroad Company*, 227 U. S. 88. It is well established that a finding without evidence is beyond the power of the Commission, *United States and Interstate Commerce Commission* v. *Abilene & Southern Railway Company, et al.*, 265 U. S. 274.

The Commission has not explained in its report why it is necessary to reduce rates on commodities other than those involved in the instant proceeding which will result as to many rates that are now determined by exceptions to the classification and commodity rates, such as those decided in *New Automobiles In Interstate Commerce*, *supra*, and the rates on various other commodities as set forth in this

petition. In *Eastern Central Motor Carriers Association v. United States*, 321 U. S. 194, at 211, the Court said:

> "In returning the case we emphasize that we do not question the Commission's authority to adopt and apply general policies appropriate to particular classes of cases, so long as they are consistent with the statutory standards which govern its actions and are formulated not only after due consideration of the factors involved but *with sufficient explication to enable the parties and ourselves to understand, with a fair degree of assurance, why the Commission acts as it does.*" (Emphasis supplied.)

Any one of such reasons justify the Commission reopening this proceeding so as to permit these respondents to reargue this case, based on the decision, so as to point out the infirmitives therein, and thereafter reconsider the issues and issue a report supported by the evidence of record and with full appreciation of the principles heretofore followed in rate making, all of which we submit would require the Commission to find that class rates in the western territory, as involved herein, should be substantially higher than those prescribed for application in Official territory.

There is no necessity for a rehearing in this proceeding as long as the issues are restricted to the territory originally involved; this for the reason that the record as made by respondent carriers in the western district was as complete as it was possible to present. If, however, the Commission determines that the rates as prescribed in this proceeding will, of necessity, have an effect upon rates to Mountain Pacific and Transcontinental territories then a

further hearing would have to be held in order to permit all parties to submit evidence as to rates from, to and within Mountain Pacific and Transcontinental territories.

The Commission's own statements, as contained in the report, the results that would obtain, not only as to class rate traffic but as to traffic moving under exception and commodity ratings, and the record considered in its entirety justify this petition of western respondents and the granting of their plea for a postponement of the effective date of the order, for reopening, for reargument and thereafter reconsideration of the issues as involved. Fairness and justice require that this be done. It is so prayed.

Respectfully submitted,

H. C. Barron,
James G. Blaine,
B. F. Batts,
H. E. Boe,
P. F. Gault,
J. A. Gillen,
Wallace T. Hughes,
R. G. Hagman,
H. H. Larimore,
G. H. Muckley,
Conrad Olson,
Dana T. Smith,
Carson L. Taylor,
Robert Thompson,
Attorneys for Western Respondents.

Room 310, Union Station,
Chicago, Illinois,
July 17, 1945.

CERTIFICATE OF SERVICE.

I hereby certify that I have this day served the foregoing document on all parties of record in this proceeding by mailing a copy thereof, properly addressed, to each such party.

Dated at Chicago, Illinois, this 17th day of July, 1945.

By WALLACE T. HUGHES,
Of Counsel for Western Respondents.

Appendix A—Page 1

STATEMENT OF RATES ON HOGS IN SINGLE DECK CARS, CARLOAD, APPLICABLE BETWEEN ALL POINTS IN WESTERN TRUNK LINE AND SOUTHWESTERN TERRITORIES COMPARED WITH THE EDWARDS' FULLY DISTRIBUTED COSTS FOR HANDLING 8 TONS IN A STOCK CAR IN WESTERN DISTRICT

Column A—Costs computed on short-line rate-making distance formula.
Column B—Costs computed on maximum circuity observed in Fourth Section Orders.

Miles (Short Line Rate-making Formula)	Rate in Cents Per 100 Pounds	Edwards' Costs in Cents Per 100 Pounds		Per Cent Rate of Edwards' Cost Shown in		Miles (Maximum Circuity Distance Observed in Fourth Section Orders)
		Column A	Column B	Column A	Column B	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
100	24	20.5	26.5	117.07	90.94	170
200	33	29.1	37.7	113.40	87.53	300
300	39	37.7	38.6	103.45	101.04	450
400	45	46.3	63.4	97.19	70.98	600
500	51	54.8	76.3	93.07	66.84	750
600	56	63.4	89.1	88.33	62.85	900
700	60	72.0	102.0	83.33	58.82	1050
800	65	80.5	114.8	80.75	56.62	1200
900	70	89.1	127.7	78.56	54.82	1350
1000	75	97.7	140.6	76.77	53.34	1500
1100	80	106.3	140.6	75.26	56.90	1500
1200	85	114.8	149.1	74.04	57.01	1600
1300	89	123.4	160.5	72.12	55.45	1733
1400	94	132.0	172.0	71.21	54.65	1867
1500	99	140.6	183.4	70.41	53.98	2000
1600	104	149.1	194.8	69.75	53.39	2133
1700	109	157.7	206.3	69.16	52.84	2267
1800	113	166.3	217.7	67.95	51.91	2400
1900	119	174.8	229.1	68.08	51.94	2533
2000	123	183.4	240.6	67.07	51.12	2667
2100	128	192.0	252.0	66.67	50.79	2800
2200	133	200.6	263.4	66.30	50.49	2933
2300	138	209.1	274.9	66.00	50.20	3067
2400	142	217.7	286.3	65.23	49.60	3200

STATEMENT OF RATES ON STOCK CATTLE, CARLOAD, APPLICABLE BETWEEN ALL POINTS IN WESTERN TRUNK LINE AND SOUTHWESTERN TERRITORIES COMPARED WITH THE EDWARDS' FULLY DISTRIBUTED COSTS FOR HANDLING 10 TONS IN A STOCK CAR IN WESTERN DISTRICT

Column A—Costs computed on short-line rate-making distance formula.
Column B—Costs computed on maximum circuity observed in Fourth Section Orders.

Miles (Short Line Rate-making Formula)	Rate in Cents Per 100 Pounds	Edwards' Costs in Cents Per 100 Pounds		Per Cent Rate of Edwards' Cost Shown in		Miles (Maximum Circuity Distance Observed in Fourth Section Orders)
		Column A	Column B	Column A	Column B	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
100	18	17.4	22.5	103.45	80.00	170
200	24	24.8	32.1	96.77	74.77	300
300	29	32.1	43.2	90.34	67.13	450
400	33	39.5	54.3	83.54	60.77	600
500	37½	46.9	65.4	79.96	57.34	750
600	41	54.3	76.4	75.51	53.66	900
700	45	61.7	87.5	72.93	51.43	1050
800	48½	69.0	98.6	70.29	49.19	1200
900	52	76.4	109.7	68.06	47.40	1350
1000	55½	83.8	120.7	66.23	45.98	1500
1100	58½	91.2	120.7	64.14	48.47	1500
1200	63	98.6	129.1	63.89	49.18	1600
1300	66½	106.0	137.9	62.74	48.22	1733
1400	69½	113.3	147.8	61.34	47.02	1867
1500	73	120.7	157.6	60.48	46.32	2000
1600	76½	128.1	167.5	59.72	45.67	2133
1700	81	135.5	177.3	59.78	45.69	2267
1800	84	142.9	187.2	58.78	44.87	2400
1900	87½	150.3	197.0	58.22	44.42	2533
2000	91	157.6	206.9	57.74	43.98	2667
2100	94½	165.0	216.7	57.27	43.61	2800
2200	98½	172.4	226.5	57.13	43.49	2933
2300	102	179.8	236.4	56.75	43.15	3067
2400	105½	187.2	246.2	56.36	42.85	3200

STATEMENT OF RATES ON BEEF CATTLE, CARLOAD, APPLICABLE BETWEEN ALL POINTS IN WESTERN TRUNK LINE AND SOUTHWESTERN TERRITORIES COMPARED WITH THE EDWARDS' FULLY DISTRIBUTED COSTS FOR HANDLING 11 TONS IN A STOCK CAR IN WESTERN DISTRICT

Column A—Costs computed on short-line rate-making distance formula.
Column B—Costs computed on maximum circuity observed in Fourth Section Orders.

Miles (Short Line Rate-making Formula)	Rate in Cents Per 100 Pounds	Edwards' Costs in Cents Per 100 Pounds		Per Cent Rate of Edwards' Cost Shown in		Miles (Maximum Circuity Distance Observed in Fourth Section Orders)
		Column A	Column B	Column A	Column B	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
100	21	16.2	21.1	129.63	99.53	170
200	28	23.2	30.1	120.69	93.02	300
300	34	30.1	40.5	112.95	83.95	450
400	39	37.1	51.0	105.12	76.47	600
500	44	44.0	61.4	100.00	71.66	750
600	48	51.0	71.8	94.12	66.85	900
700	53	57.9	82.2	91.54	64.48	1050
800	57	64.9	92.7	87.83	61.49	1200
900	61	71.8	103.1	84.96	59.17	1350
1000	65	78.8	113.5	82.49	57.27	1500
1100	69	85.7	113.5	80.61	60.79	1500
1200	74	92.7	120.5	79.83	61.41	1600
1300	78	99.6	129.7	78.31	60.13	1733
1400	82	106.6	139.0	76.92	58.99	1867
1500	86	113.5	148.3	75.77	57.99	2000
1600	90	120.5	157.5	74.69	57.14	2133
1700	95	127.4	166.8	74.57	56.95	2267
1800	99	134.4	176.1	73.66	56.22	2400
1900	103	141.3	185.3	72.89	55.59	2533
2000	107	148.3	194.6	72.15	54.98	2667
2100	111	155.2	203.9	71.52	54.44	2800
2200	116	162.2	213.1	71.52	54.43	2933
2300	120	169.1	222.4	70.96	53.96	3067
2400	124	176.1	231.7	70.41	53.52	3200

Appendix A—Page 4

STATEMENT OF RATES ON BRICK, CARLOAD, PRESCRIBED IN I.C.C. DOCKET 14617 FOR APPLICATION IN SOUTHWESTERN TERRITORY AS COMPARED WITH THE EDWARDS' FULLY DISTRIBUTED COSTS FOR HANDLING 38 TONS IN A GONDOLA CAR IN WESTERN DISTRICT

Column A—Costs computed on short-line rate-making distance formula.
Column B—Costs computed on maximum circuity observed in Fourth Section Orders.

Miles (Short Line Rate-making Formula)	Rate in Cents Per 100 Pounds	Edwards' Costs in Cents Per 100 Pounds		Per Cent Rate of Edwards' Cost Shown in		Miles (Maximum Circuity Distance Observed in Fourth Section Orders)
		Column A	Column B	Column A	Column B	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
10	6	4.6	4.8	130.43	125.00	17
100	11	8.1	10.8	135.80	101.85	170
200	14	11.9	15.8	117.65	88.61	300
300	17	15.8	21.6	107.59	78.70	450
400	19	19.7	27.5	96.45	69.09	600
500	21	23.6	33.3	88.98	63.06	750
600	23	27.5	39.1	83.64	58.82	900
700	25	31.3	44.9	79.87	55.68	1050
800	27	35.2	50.7	76.70	53.25	1200
900	29	39.1	56.6	74.17	51.24	1350
1000	31	43.0	62.4	72.09	49.68	1500
1100	34	46.9	62.4	72.49	54.49	1500
1200	36	50.7	66.3	71.01	54.30	1600
1300	38	54.6	71.4	69.60	53.22	1733
1400	40	58.5	76.6	68.38	52.22	1867
1500	42	62.4	81.8	67.31	51.34	2000

STATEMENT OF JOINT LINE SCALE OF RATES ON SAND AND GRAVEL PRESCRIBED IN I.C.C. DOCKET 17000, PART 11A, FOR APPLICATION IN WESTERN TERRITORY AS COMPARED WITH THE EDWARDS' FULLY DISTRIBUTED COSTS FOR HANDLING 56 TONS IN GONDOLA CARS IN WESTERN DISTRICT

Column A—Costs computed on short-line rate-making distance formula.
Column B—Costs computed on maximum circuity observed in Fourth Section Orders.

Miles (Short Line Rate-making Formula)	Rate in Cents Per 100 Pounds	Edwards' Costs in Cents Per 100 Pounds		Per Cent Rate of Edwards' Cost Shown in		Miles (Maximum Circuity Distance Observed in Fourth Section Orders)
		Column A	Column B	Column A	Column B	
(1)	(2)	(3)	(4)	(5)	(6)	(7)
10	3.6	3.9	4.1	92.31	87.80	17
100	6.4	7.0	9.4	91.43	68.09	170
200	8.8	10.5	13.9	83.81	63.31	300
300	11.0	13.9	19.1	79.14	57.59	450
400	12.4	17.4	24.4	71.26	50.82	600
500	13.8	20.9	29.6	66.03	46.62	750
600	16.0	24.4	34.8	65.57	45.98	900
700	17.6	27.8	40.0	63.31	44.00	1050
800	19.3	31.3	45.2	61.66	42.70	1200
900	21.5	34.8	50.4	61.78	42.66	1350
1000	22.9	38.3	55.6	59.79	41.19	1500
1100	24.0	41.7	55.6	57.55	43.17	1500
1200	25.1	45.2	59.1	55.53	42.47	1600
1300	26.2	48.7	63.7	53.80	41.13	1733

Appendix A—Page 6

STATEMENT OF RATES ON GASOLINE, CARLOAD, FROM TULSA, OKLAHOMA; FORT WORTH AND HOUSTON, TEXAS TO DESTINATIONS IN WESTERN TRUNK LINE TERRITORY AS COMPARED WITH THE EDWARDS' FULLY DISTRIBUTED COSTS FOR HANDLING 26 TONS IN A TANK CAR

Column A—Based on short-line rate-making formula distances.
Column B—Based on maximum circuity.

To	From	Miles (Short Line Rate-Making Formula)	Rate in Cents Per 100 Pounds	Edwards' Costs in Cents Per 100 Pounds		Per Cent Rate of Edwards' Costs Shown in	
				Col. A	Col. B	Col. A	Col. B
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Kansas City, Mo.	Tulsa, Okla.	244	22	16.1	21.9	136.6	100.0
	Ft. Worth, Tex.	505	26	28.6	36.3	90.9	71.6
	Houston, Tex.	726	29	39.2	56.6	74.0	51.2
Des Moines, Ia.	Tulsa, Okla.	454	29	26.1	37.0	111.1	78.4
	Ft. Worth, Tex.	715	31½	38.7	56.3	81.4	56.0
	Houston, Tex.	935	34½	49.2	71.7	70.1	48.1
Omaha, Neb.	Tulsa, Okla.	425	29	24.8	35.4	116.9	81.9
	Ft. Worth, Tex.	681	31½	37.0	53.4	85.1	59.0
	Houston, Tex.	908	34½	47.9	64.9	72.0	53.2
Minneapolis, Minn.	Tulsa, Okla.	714	37	38.6	55.8	96.0	66.3
	Ft. Worth, Tex.	976	39½	51.2	74.6	77.1	52.9
	Houston, Tex.	1196	42½	61.8	76.4	68.8	55.6
E. St. Louis, Ill.	Tulsa, Okla.	427	29	24.8	35.6	116.9	81.5
	Ft. Worth, Tex.	679	31½	36.9	48.4	85.4	65.1
	Houston, Tex.	780	32	43.8	55.7	73.1	57.5
Chicago, Ill.	Tulsa, Okla.	683	36	37.1	53.5	97.0	67.3
	Ft. Worth, Tex.	925	38½	48.9	70.9	78.7	54.3
	Houston, Tex.	1084	39	54.0	76.4	72.2	51.0
Average		723	32.8	39.1	56.4	83.9	58.2

STATEMENT OF RATES ON COTTON LCL INTO COMPRESS POINT AND CL BEYOND COMPARED WITH EDWARDS' COSTS OF HANDLING IN BOX CARS OF LOADS INDICATED FOR HAULS IN WESTERN AND SOUTHERN TERRITORIES

FROM	TO (Through Successive Transit Points)	MILES: TO Compress Point	MILES: FROM Compress or Concentration Point	Rate in Cents Per 100 Lbs.	Edwards' Costs in Cents Per 100 Pounds: 5 Tons CL to Compress Point	Edwards' Costs in Cents Per 100 Pounds: 25 Tons Beyond Compress Point	Edwards' Costs in Cents Per 100 Pounds: Total
Elk City, Okla.	(a) Clinton, Okla.	(1) 30			20.9		
	(b) Memphis, Tenn.		(1) 583			29.0	
	(d) Kanapolis, N. C.		(2) 707	67		30.8	80.7
Eldorado, Okla.	(a) Altus, Okla.	(3) 22			20.0		
	(b) Memphis, Tenn.		(3) 732			35.1	
	(d) Augusta, Ga.		(4) 591	65		26.4	81.5
Estelline, Tex.	(a) Childress, Tex.	(5) 17			19.6		
	(b) Dallas, Tex.		(5) 253			15.6	
	(c) New Orleans, La.		(6) 491			22.6	
	(d) Charlotte, N. C.		(2) 777	69		31.4	89.2
Anton, Tex.	(a) Lubbock, Tex.	(7) 24			20.3		
	(b) Houston, Tex.		(7) 574			28.7	
	(c) New Orleans, La.		(8) 349			16.9	
	(d) Macon, Ga.		(2) 615	70		25.3	91.2

(a) Compress Point.
(b) Concentration Point.
(c) Junction beyond which Southern territory cost was used.
(d) Destination.
(1) Via CRI&P Ry.
(2) Via Southern Ry.
(3) Via StL-SF Ry.,
(4) Via StL-SF, Birmingham, Ala., SAL, Atlanta, Ga., Ga RR.
(5) Via FW&DC Ry.
(6) Via T&P Ry.
(7) Via Santa Fe Ry.
(8) Via SouPac Lines.

Appendix A -- Page

STATEMENT OF MOVEMENT UNDER TRANSIT OF WHEAT AND ITS PRODUCTS, THE PRESENT RATES AND THE RATES PRESCRIBED IN I. & S. DOCKET 4208 TO MEMPHIS, TENN., COMPARED WITH THE EDWARDS COSTS FOR HAULING 46 TONS OF WHEAT AND 25 TONS OF PRODUCTS IN BOX CARS

Original Point of Origin	Transit Points in the Order Transit was taken with Mississippi River Gateway shown last	Commodity, Route of Movement and Distance for Each Leg of Movement			Edwards' Full Costs per 100 Lbs. (1)	Rates in Cents Per 100 Pounds	
		Commodity	Route of Movement	Miles		Present	I&S 4208
Coldwater, Kans.	Kansas City, Mo.	Wheat	AT&SF	338	15 36		
	Atchison, Kans.	Wheat	AT&SF	71	6 23		
	Memphis, Tenn.	Flour	CB&Q, Kansas City, KCS, M&A, Y&MV	629	30 90		
				1038	52 48	40	37
St. Johns, Kans.	Hutchinson, Kans.	Wheat	AT&SF	48	5 45		
	Buhler, Kans.	Wheat	AT&SF, Burrton, StLSF	22	4 56		
	Memphis, Tenn.	Flour	StLSF	591	29 35		
				661	39 36	38	35
Dillwyn, Kans.	Sterling, Kans.	Wheat	AT&SF	74	6 34		
	St. Joseph, Mo.	Shorts	AT&SF	236	14 88		
	Memphis, Tenn.	Feed	CB&Q, St. Louis, IC	658	32 08		
				968	53 30	38	35
Arlington, Kans.	Hutchinson, Kans.	Wheat	CRI&P	17	4 39		
	Abilene, Kans.	Wheat	CRI&P	101	7 26		
	Memphis, Tenn.	Flour	CRI&P	771	36 69		
				889	48 34	37	34
Greensburg, Kans.	Hutchinson, Kans.	Wheat	CRI&P	83	6 64		
	McPherson, Kans.	Wheat	CRI&P	27	4 73		
	St. Joseph, Mo.	Flour	CRI&P	218	14 14		
	Memphis, Tenn.	Flour	CB&Q, St. Louis, IC	636	31 19		
				964	56 70	38	35
Smith Center, Kans.	Kansas City, Mo.	Wheat	CRI&P	268	12 96		
	Aurora, Mo.	Shorts	StLSF	213	13 94		
	Memphis, Tenn.	Shorts	StLSF	311	17 93		
				792	44 83	37	37
Alton, Kans.	Kansas City, Mo.	Wheat	MoPac	278	13 30		
	Advance, Mo.	Wheat	StLSF	513	21 32		
	Sikeston, Mo.	Wheat	StLSF	45	5 35		
	Memphis, Tenn.	Flour	StLSF	139	10 92		
				975	50 89	37	37
Alton, Kans.	Kansas City, Mo.	Wheat	MoPac	278	13 30		
	Fredericksburg, Mo.	Wheat	MoPac	376	16 64		
	Memphis, Tenn.	Flour	MoPac	252	15 53		
				906	45 47	37	37

(1) Including 4% return.

STATEMENT OF MOVEMENT UNDER TRANSIT OF WHEAT AND ITS PRODUCTS, THE PRESENT RATES, AND THE RATES PRESCRIBED IN I-&-S DOCKET 4208 TO MEMPHIS, TENN., COMPARED WITH THE EDWARDS' COSTS FOR HAULING 46 TONS OF WHEAT AND 25 TONS OF PRODUCTS IN BOX CARS

Original Point of Origin	Transit Points in the Order Transit was taken with Mississippi River Gateway shown last	Commodity, Route of Movement and Distance for Each Leg of Movement			Edwards' Full Costs per 100 Lbs. (1)	Rates in Cents Per 100 Pounds	
		Commodity	Route of Movement	Miles		Present	I&S 4208
Wakeeney, Kans.	Kansas City, Mo.	Wheat	UnPac	238	11 93		
	Pleasanton, Kans.	Wheat	MoPac	98	7 15		
	Memphis, Tenn.	Flour	MoPac	483	24 95		
				819	44 03	39	34
Greensburg, Kans.	Hutchinson, Kans.	Wheat	CRI&P	83	6 64		
	Salina, Kans.	Wheat	CRI&P	125	8 08		
	Kansas City, Mo.	Bran	CRI&P	199	13 37		
	St. Louis, Mo.	Bran	MoPac	281	16 71		
	Memphis, Tenn.	Feed	StLSF	306	17 73		
				994	62 53	38	35
Shattuck, Okla.	Alva, Okla.	Wheat	AT&SF	88	6 81		
	Ponca City, Okla.	Wheat	AT&SF	133	8 35		
	Memphis, Tenn.	Flour	AT&SF, Okla. City-CRI&P	582	28 99		
				803	44 15	36	33
Medford, Okla.	Ponca City, Okla.	Wheat	AT&SF	43	5 28		
	Ft. Worth, Tex.	Wheat	AT&SF, GC&SF	300	14 05		
	Memphis, Tenn.	Flour	StL-SW	504	25 80		
				847	45 13	34	31
Marshall, Okla.	Enid, Okla.	Wheat	AT&SF	27	4 73		
	Wichita, Kan.	Wheat	AT&SF	143	8 69		
	Aurora, Mo.	Wheat	AT&SF, Cherryville-StLSF	247	12 24		
	Memphis, Tenn.	Flour	StLSF	311	17 93		
				728	43 59	34	31
Guymon, Okla.	Liberal, Kans.	Wheat	CRI&P	40	5 18		
	Amarillo, Tex.	Wheat	CRI&P	153	9 03		
	Okla. City, Okla.	Wheat	CRI&P	274	13 16		
	Memphis, Tenn.	Flour	CRI&P	487	25 11		
				954	52 48	41	38
Beaver, Okla.	Woodward, Okla.	Wheat	BM&E, MKT	92	6 95		
	Dallas, Tex.	Wheat	MKT	499	20 84		
	Memphis, Tenn.	Flour	T&P, MoPac	510	26 05		
				1101	53 84	39	36

(1) Including 4% return.

STATEMENT OF MOVEMENT UNDER TRANSIT OF WHEAT AND ITS PRODUCTS, THE PRESENT RATES, AND THE RATES PRESCRIBED IN I & S DOCKET 4208 TO MEMPHIS, TENN., COMPARED WITH THE EDWARDS' COSTS FOR HAULING 46 TONS OF WHEAT AND 25 TONS OF PRODUCTS IN BOX CARS

Original Point of Origin	Transit Points in the Order Transit was taken with Mississippi River Gateway shown last	Commodity, Route of Movement and Distance for Each Leg of Movement			Edwards' Full Costs per 100 Lbs. (1)	Rates in Cents Per 100 Pounds	
		Commodity	Route of Movement	Miles		Present	I&S 4208
Beaver, Okla.	Wichita Falls, Tex.	Wheat	BM&E, MKT	312	14 46		
	Ft. Worth, Tex.	Wheat	MKT	176	9 82		
	Dallas, Tex.	Wheat	MKT	72	6 27		
	Memphis, Tenn.	Flour	StLSW	482	24 91		
				1042	55 46	39	36
Erie, Okla.	Blackwell, Okla.	Wheat	StLSF	23	4 60		
	Enid, Okla.	Wheat	StLSF	48	5 45		
	Springfield, Mo.	Wheat	StLSF	307	14 29		
	Memphis, Tenn.	Flour	StLSF	281	16 71		
				659	41 05	34	31
Clinton, Okla.	Enid, Okla.	Wheat	StLSF	95	7 05		
	Wichita, Kans.	Wheat	StLSF	173	9 71		
	Memphis, Tenn.	Flour	StLSF	547	27 56		
				815	44 32	34	31
Perryton, Tex.	Enid, Okla.	Wheat	Santa Fe	225	11 49		
	Okla. City, Okla.	Wheat	Santa Fe	88	6 81		
	Shawnee, Okla.	Wheat	CRI&P	38	5 11		
	Memphis, Tenn.	Flour	CRI&P	449	23 56		
				800	46 97	41	37
Dalhart, Tex.	Amarillo, Tex.	Wheat	FW&DC	82	6 61		
	Wichita Falls, Tex.	Wheat	FW&DC	222	11 39		
	Ft. Worth, Tex.	Wheat	FW&DC	114	7 70		
	Memphis, Tenn.	Flour	StLSW	504	25 80		
				922	51 50	42	38
Dimmitt, Tex.	Lubbock, Tex.	Wheat	FW&DC	115	7 74		
	Ft. Worth, Tex.	Wheat	FW&DC	361	16 13		
	Dallas, Tex.	Wheat	FW&DC	34	4 97		
	Memphis, Tenn.	Flour	StLSF	771	36 69		
				1281	65 53	42	38
Panhandle, Tex.	Lubbock, Tex.	Wheat	Santa Fe	149	8 90		
	Temple, Tex.	Wheat	Santa Fe	361	16 13		
	Ft. Worth, Tex.	Wheat	Santa Fe	128	8 18		
	Memphis, Tenn.	Flour	StLSW	504	25 80		
				1142	59 01	39	35
			Simple Average		49 97	38 09	35 17
			% Avge. rate of avge. cost			76 23	70 38

(1) Including 4% return.

793

STATEMENT SHOWING PER CWT. REVENUE ON 40 TONS IN A GONDOLA CAR AT CLASS 20 RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 20 Rate	Edwards' Costs for Handling 40 Tons in a Gondola Car, Western District			Per Cent, Class 20 Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢37	¢17.0	¢24.5	¢34.6	217.65	151.02	106.94	1200
1000	43	20.7	30.1	42.2	207.73	142.86	101.90	1500
1200	48	24.5	32.0	50.0	195.92	150.00	96.00	1600
1400	53	28.2	37.0	57.5	187.94	143.24	92.33	1867
1600	58	32.0	42.0	65.2	181.25	138.10	88.96	2133
1800	63	35.8	47.0	72.8	175.98	134.04	86.54	2400
2000	67	39.5	52.0	80.4	169.62	128.85	83.33	2667
2200	71	43.3	57.0	88.1	163.97	124.56	80.59	2933
2400	74	47.0	62.0	95.7	157.45	119.35	77.41	3200
2600	76	50.8	67.0	103.3	149.61	113.43	73.57	3467
2800	79	54.5	72.0	111.0	144.95	109.72	71.17	3733
3000	82	58.3	77.0	118.6	140.65	106.49	69.20	4000
3200	85	62.0	82.0	126.2	137.10	103.66	67.35	4267
3500	89	67.7	89.5	137.7	131.46	99.44	64.63	4667

Appendix B—Page 2

STATEMENT SHOWING PER CWT. REVENUE ON 40 TONS IN A GONDOLA CAR AT CLASS 17½ RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 17½ Rate	Edwards' Costs for Handling 40 Tons in a Gondola Car, Western District			Per Cent, Class 17½ Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢32	¢17.0	¢24.5	¢34.6	188.24	130.61	92.49	1200
1000	37	20.7	30.1	42.2	178.74	122.92	87.68	1500
1200	42	24.5	32.0	50.0	171.43	131.25	84.00	1600
1400	47	28.2	37.0	57.5	166.67	127.03	81.74	1867
1600	51	32.0	42.0	65.2	159.38	121.43	78.22	2133
1800	55	35.8	47.0	72.8	153.63	117.02	75.55	2400
2000	58	39.5	52.0	80.4	146.84	111.54	72.14	2667
2200	62	43.3	57.0	88.1	143.19	108.77	70.37	2933
2400	64	47.0	62.0	95.7	136.17	103.23	66.88	3200
2600	67	50.8	67.0	103.3	132.15	100.00	64.86	3467
2800	69	54.5	72.0	111.0	126.61	95.83	62.16	3733
3000	72	58.3	77.0	118.6	123.50	93.05	60.76	4000
3200	74	62.0	82.0	126.2	119.35	90.24	58.64	4267
3500	78	67.7	89.5	137.7	115.21	87.15	56.64	4667

STATEMENT SHOWING PER CWT. REVENUE ON 40 TONS IN A GONDOLA CAR AT CLASS 16 RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 16 Rate	Edwards' Costs for Handling 40 Tons in a Gondola Car, Western District			Per Cent, Class 16 Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢30	¢17.0	¢24.5	¢34.6	176.47	122.48	86.71	1200
1000	34	20.7	30.1	42.2	164.25	112.96	80.57	1500
1200	38	24.5	32.0	50.0	155.10	118.75	76.00	1600
1400	43	28.2	37.0	57.5	152.48	116.22	74.78	1867
1600	46	32.0	42.0	65.2	143.75	109.52	70.66	2133
1800	50	35.8	47.0	72.8	139.66	106.38	68.68	2400
2000	53	39.5	52.0	80.4	134.18	101.92	65.92	2667
2200	56	43.3	57.0	88.1	129.33	98.25	63.56	2933
2400	59	47.0	62.0	95.7	125.53	95.16	61.65	3200
2600	61	50.8	67.0	103.3	120.08	91.04	59.05	3467
2800	63	54.5	72.0	111.0	115.60	87.50	56.76	3733
3000	66	58.3	77.0	118.6	113.21	85.71	55.65	4000
3200	68	62.0	82.0	126.2	109.68	82.93	53.88	4267
3500	71	67.7	89.5	137.7	104.87	79.33	51.56	4667

STATEMENT SHOWING PER CWT. REVENUE ON 40 TONS IN A GONDOLA CAR AT CLASS 14½ RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 14½ Rate	Edwards' Costs for Handling 40 Tons in a Gondola Car, Western District			Per Cent, Class 14½ Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢27	¢17.0	¢24.5	¢34.6	158.82	110.20	78.03	1200
1000	31	20.7	30.1	42.2	149.76	102.99	73.46	1500
1200	35	24.5	32.0	50.0	142.86	109.38	70.00	1600
1400	39	28.2	37.0	57.5	138.30	105.41	67.83	1867
1600	42	32.0	42.0	65.2	131.25	100.00	64.42	2133
1800	45	35.8	47.0	72.8	125.70	95.74	61.81	2400
2000	48	39.5	52.0	80.4	121.52	92.31	59.70	2667
2200	51	43.3	57.0	88.1	117.78	89.47	57.89	2933
2400	53	47.0	62.0	95.7	112.77	85.48	55.38	3200
2600	55	50.8	67.0	103.3	108.27	82.09	53.24	3467
2800	57	54.5	72.0	111.0	104.59	79.17	51.35	3733
3000	59	58.3	77.0	118.6	101.20	76.62	49.75	4000
3200	61	62.0	82.0	126.2	98.39	74.39	48.34	4267
3500	65	67.7	89.5	137.7	96.01	72.63	47.20	4667

STATEMENT SHOWING PER CWT. REVENUE ON 40 TONS IN A GONDOLA CAR AT CLASS 13 RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 13 Rate	Edwards' Costs for Handling 40 Tons in a Gondola Car, Western District			Per Cent, Class 13 Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢24	¢17.0	¢24.5	¢34.6	141.18	97.96	69.36	1200
1000	28	20.7	30.1	42.2	135.27	93.02	66.35	1500
1200	31	24.5	32.0	50.0	126.53	96.88	62.00	1600
1400	35	28.2	37.0	57.5	124.11	94.59	60.87	1867
1600	38	32.0	42.0	65.2	118.75	90.48	58.28	2133
1800	41	35.8	47.0	72.8	114.53	87.23	56.32	2400
2000	43	39.5	52.0	80.4	108.86	82.69	53.48	2667
2200	46	43.3	57.0	88.1	106.24	80.70	52.21	2933
2400	48	47.0	62.0	95.7	102.13	77.42	50.16	3200
2600	50	50.8	67.0	103.3	98.43	74.68	48.40	3467
2800	51	54.5	72.0	111.0	93.58	70.83	45.95	3733
3000	53	58.3	77.0	118.6	90.91	68.83	44.69	4000
3200	55	62.0	82.0	126.2	88.71	67.07	43.58	4267
3500	58	67.7	89.5	137.7	85.67	64.80	42.12	4667

733

STATEMENT SHOWING PER CWT. REVENUE ON 20 TONS IN A BOX CAR AT CLASS 20 RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 20 Rate	Edwards' Costs for Handling 20 Tons in a Box Car, Western District			Per Cent, Class 20 Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢37	¢24.0	¢34.0	¢41.6	154.17	108.82	88.94	1200
1000	43	29.0	41.5	50.6	148.28	103.61	85.15	1500
1200	48	34.0	44.0	59.3	141.18	109.09	80.94	1600
1400	53	39.0	50.6	68.2	135.90	104.74	77.71	1867
1600	58	44.0	57.3	77.1	131.82	101.22	75.23	2133
1800	63	49.0	64.0	86.0	128.57	98.44	73.26	2400
2000	67	54.0	70.6	94.9	124.07	94.90	70.60	2667
2200	71	59.0	77.3	103.8	120.34	91.85	68.40	2933
2400	74	64.0	84.0	112.7	115.63	88.10	65.66	3200
2600	76	69.0	90.6	121.5	110.14	83.89	62.55	3467
2800	79	74.0	97.3	130.4	106.76	81.19	60.58	3733
3000	82	79.0	104.0	139.3	103.80	78.85	58.87	4000
3200	85	84.0	110.7	148.2	101.19	76.78	57.35	4267
3500	89	91.5	120.7	161.5	97.27	73.74	55.11	4667

TATEMENT SHOWING PER CWT. REVENUE ON 20 TONS IN A BOX CAR AT CLASS 17½ RATES COMPARED WITH EDWARDS' COSTS

olumn A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

olumn B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

olumn C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 17½ Rate	Edwards' Costs for Handling 20 Tons in a Box Car, Western District			Per Cent, Class 17½ Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢32	¢24.0	¢34.0	¢41.6	133.33	94.12	76.92	1200
1000	37	29.0	41.5	50.5	127.59	89.16	73.27	1500
1200	42	34.0	44.0	59.3	123.53	95.45	70.83	1600
1400	47	39.0	50.6	68.2	120.51	92.89	68.91	1867
1600	51	44.0	57.3	77.1	115.91	89.01	66.15	2133
1800	55	49.0	64.0	86.0	112.24	85.94	63.95	2400
2000	58	54.0	70.6	94.9	107.40	82.15	61.12	2667
2200	62	59.0	77.3	103.8	105.08	80.21	59.73	2933
2400	64	64.0	84.0	112.7	100.00	76.19	56.79	3200
2600	67	69.0	90.6	121.5	97.10	73.95	55.14	3467
2800	69	74.0	97.3	130.4	93.24	70.91	52.91	3733
3000	72	79.0	104.0	139.3	91.14	69.23	51.69	4000
3200	74	84.0	110.7	148.2	88.10	66.85	49.93	4267
3500	78	91.5	120.7	161.5	85.25	64.62	48.33	4667

STATEMENT SHOWING PER CWT. REVENUE ON 20 TONS IN A BOX CAR AT CLASS 16 RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 16 Rate	Edwards' Costs for Handling 20 Tons in a Box Car, Western District			Per Cent, Class 16 Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢30	¢24.0	¢34.0	¢41.6	125.00	88.24	72.12	1200
1000	34	29.0	41.5	50.5	117.24	81.93	67.33	1500
1200	38	34.0	44.0	59.3	111.76	86.36	64.08	1600
1400	43	39.0	50.6	68.2	110.26	84.98	63.04	1867
1600	46	44.0	57.3	77.1	104.55	80.28	59.66	2133
1800	50	49.0	64.0	86.0	102.04	78.13	58.14	2400
2000	53	54.0	70.6	94.9	98.15	75.07	55.85	2667
2200	56	59.0	77.3	103.8	94.92	72.45	53.95	2933
2400	59	64.0	84.0	112.7	92.19	70.24	52.35	3200
2600	61	69.0	90.6	121.5	88.41	67.33	50.21	3467
2800	63	74.0	97.3	130.4	85.14	64.75	48.31	3733
3000	66	79.0	104.0	139.3	83.54	63.46	47.38	4000
3200	68	84.0	110.7	148.2	80.95	61.43	45.88	4267
3500	71	91.5	120.7	161.5	77.60	58.82	43.96	4667

STATEMENT SHOWING PER CWT. REVENUE ON 20 TONS IN A BOX CAR AT CLASS 14½ RATES COMPARED WITH EDWARDS' COSTS.

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 14½ Rate	Edwards' Costs for Handling 20 Tons in a Box Car, Western District			Per Cent, Class 14½ Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢27	¢24.0	¢34.0	¢41.6	112.50	79.41	64.90	1200
1000	31	29.0	41.5	50.5	106.90	74.70	61.39	1500
1200	35	34.0	44.0	59.3	102.94	79.75	59.02	1600
1400	39	39.0	50.6	68.2	100.00	77.08	57.18	1867
1600	42	44.0	57.3	77.1	95.45	73.30	54.47	2133
1800	45	49.0	64.0	86.0	91.84	70.31	52.33	2400
2000	48	54.0	70.6	94.9	88.89	67.99	50.58	2667
2200	51	59.0	77.3	103.8	86.44	65.98	49.13	2933
2400	53	64.0	84.0	112.7	82.81	63.10	47.03	3200
2600	55	69.0	90.6	121.5	79.71	60.71	45.27	3467
2800	57	74.0	97.3	130.4	77.03	58.58	43.71	3733
3000	59	79.0	104.0	139.3	74.68	56.73	42.35	4000
3200	61	84.0	110.7	148.2	72.62	55.10	41.16	4267
3500	65	91.5	120.7	161.5	71.04	53.85	40.25	4667

Appendix C—Page 5

STATEMENT SHOWING PER CWT. REVENUE ON 20 TONS IN A BOX CAR AT CLASS 13 RATES COMPARED WITH EDWARDS' COSTS

Column A—Out-of-pocket cost for short-line distance computed as per rate-making formula.

Column B—Out-of-pocket cost for maximum distance computed as per standard Fourth Section circuity formula.

Column C—Fully distributed cost for short-line distance computed as per rate-making formula.

Miles (Short-Line Rate-Making Formula)	Appendix 10 Class 13 Rate	Edwards' Costs for Handling 20 Tons in a Box Car, Western District			Per Cent, Class 13 Rate of Edwards' Costs Shown in			Miles (Maximum Fourth Section Circuity Distances)
		Column A	Column B	Column C	Column A	Column B	Column C	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
800	¢24	¢24.0	¢34.0	¢41.6	100.00	70.59	57.69	1200
1000	28	29.0	41.5	50.5	96.55	67.47	55.45	1500
1200	31	34.0	44.0	59.3	91.18	70.46	52.28	1600
1400	35	39.0	50.6	68.2	89.74	69.17	51.32	1867
1600	38	44.0	57.3	77.1	86.36	66.32	49.29	2133
1800	41	49.0	64.0	86.0	83.67	64.06	47.67	2400
2000	43	54.0	70.6	94.9	79.63	60.91	45.31	2667
2200	46	59.0	77.3	103.8	77.97	59.51	44.32	2933
2400	48	64.0	84.0	112.7	75.00	57.14	42.59	3200
2600	50	69.0	90.6	121.5	72.46	55.19	41.16	3467
2800	51	74.0	97.3	130.4	68.92	52.42	39.11	3733
3000	53	79.0	104.0	139.3	67.09	50.96	38.05	4000
3200	55	84.0	110.7	148.2	65.48	49.68	37.11	4267
3500	58	91.5	120.7	161.5	63.39	48.05	35.91	4667

PENDIX 10 SCALE OF CLASS 100 (FIRST CLASS) RATES FOR 100 MILE BLOCKS COMPARED WITH VARIOUS SCALES SHOWN IN APPENDIX 8 OF THE REPORT ALSO THE "BASIC" WTL-SW SCALE; ALSO (IN COLUMN B) THE RATE OF PROGRESSION FOR EACH 100 MILES OVER 100.

OL. 1	COL. 2		COL. 3		COL. 4		COL. 5		COL. 6		COL. 7	
Dis-nce—iles	ICC 28300 Appendix 10		Eastern		WTL—SW Basic		WTL Zone I		WTL—SW Zone III		Southern K-2	
	A	B	A	B	A	B	A	B	A	B	A	B
100	70		62		63		73		90		84	
200	90	20	80	18	86	23	97	24	123	33	112	28
300	110	20	96	16	102	16	117	20	147	24	134	22
400	125	15	109	13	120	18	136	19	172	25	156	21
500	140	15	122	13	138	18	156	20	196	24	173	17
600	155	15	135	13	154	16	176	20	220	24	189	16
700	170	15	149	14	171	17	196	20	244	24	206	17
800	185	15	160	11	184	13	210	14	263	19	222	16
900	199	14	171	11	197	13	226	16	282	19	235	13
1000	213	14	182	11	210	13	240	14	300	18	249	14
1100	227	14	193	11	223	13	255	15	319	19	262	13
1200	240	13	204	11	237	14	270	15	338	19	275	13
1300	253	13	215	11	250	13	285	15	356	18	288	13
1400	266	13	226	11	263	13	299	14	375	19	301	13
1500	278	12	*237	11	276	13	315	16	394	19	*315	14
1600	290	12	248	11	289	13	330	15	412	18	328	13
1700	302	12	259	11	303	14	345	15	431	19	341	13
1800	313	11	270	11	316	13	360	15	450	19	354	13
1900	324	11	281	11	329	13	*375	15	*469	19	367	13
2000	334	10	292	11	342	13	390	15	487	18	381	14
2100	344	10	303	11	355	13	405	15	506	19	394	13
2200	353	9	314	11	369	14	420	15	525	19	407	13
2300	361	8	325	11	382	13	435	15	543	18	420	13
2400	368	7	336	11	*395	13	450	15	563	20	433	13
2500	*375	7	347	11	408	13	465	15	582	19	447	14

ol. 2 shows the scale in Appendix 10 of the 28300 decision.

ol. 3 shows Eastern scale in Appendix 8 extended beyond 1500 miles at same rate of progression as used for distances over 700 miles.

ol. 4 shows the WTL-SW Basic scale prescribed in Appendix U, 6th Supp. Report in Western Trunk Line Class Rates and Appendix B in 21st Supp. Report in Consolidated Southwestern Cases.

ol. 5 and 6 show WTL Zone I and WTL-SW Zone III Scales in Appendix 8, including also rates over 1500 miles and rates beyond 1900 miles extended as shown.

ol. 7 shows Southern K-2 scale in Appendix 8 extended beyond 1500 miles at same rate of progression as used for distances over 800 miles.

ol. A shows Class 100 (first class) rates, in cents per 100 pounds, including the general 10-percent increase of 1938.

ol. B shows the aggregate rate of progression for each 100 miles over 100.

—Indicates the last mileage block included in the prescribed scale.

SCALES ON PAGE 1 EXTENDED BEYOND 2500 MILES ON BASIS OF SAME RATE OF PROGRESSION AS SHOWN EXCEPT AS NOTED

COL. 1	COL. 2		COL. 2-A		COL. 3		COL. 4		COL. 5		COL. 6		COL. 7	
Distance Miles	ICC 28300 Extended Note A		ICC 28300 Extended Note B		Eastern		WTL—SW Basic		WTL Zone I		WTL—SW Zone III		Southern K-2	
	A	B	A	B	A	B	A	B	A	B	A	B	A	B
2600	382	7	381	6	358	11	421	13	465	15	601	19	460	13
2700	389	7	386	5	369	11	435	14	480	15	620	19	473	13
2800	396	7	390	4	380	11	448	13	495	15	639	19	486	13
2900	403	7	393	3	391	11	461	13	510	15	658	19	499	13
3000	410	7	396	3	402	11	474	13	525	15	677	19	513	14

Col. A shows rates, in cents per 100 pounds.

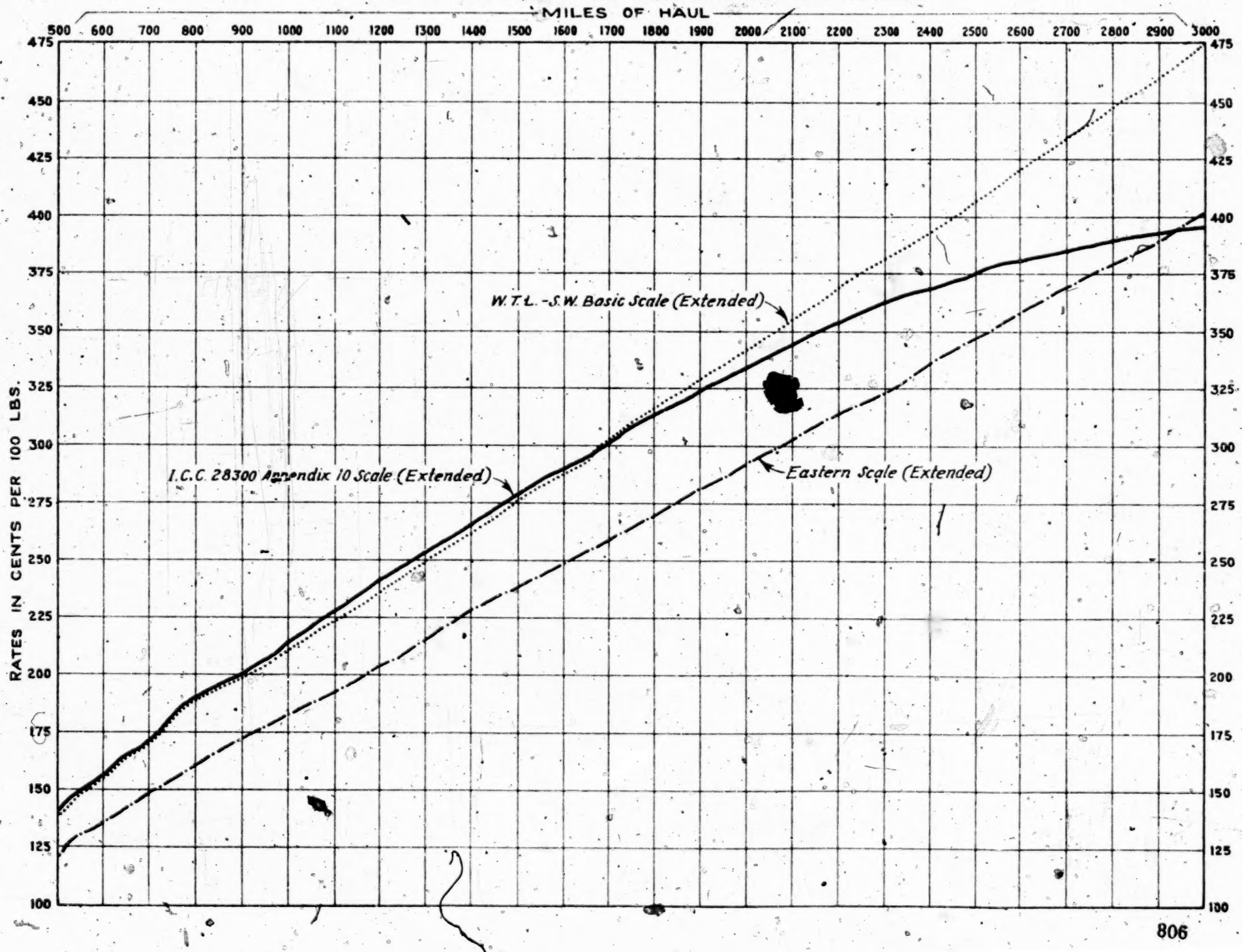
Col. B shows rate of progression for each 100 miles over 2500.

NOTE A—The "Extended" scale in Col. 2 is made by using the same rate of progression as in Appendix 10 for distances over 2300 miles.

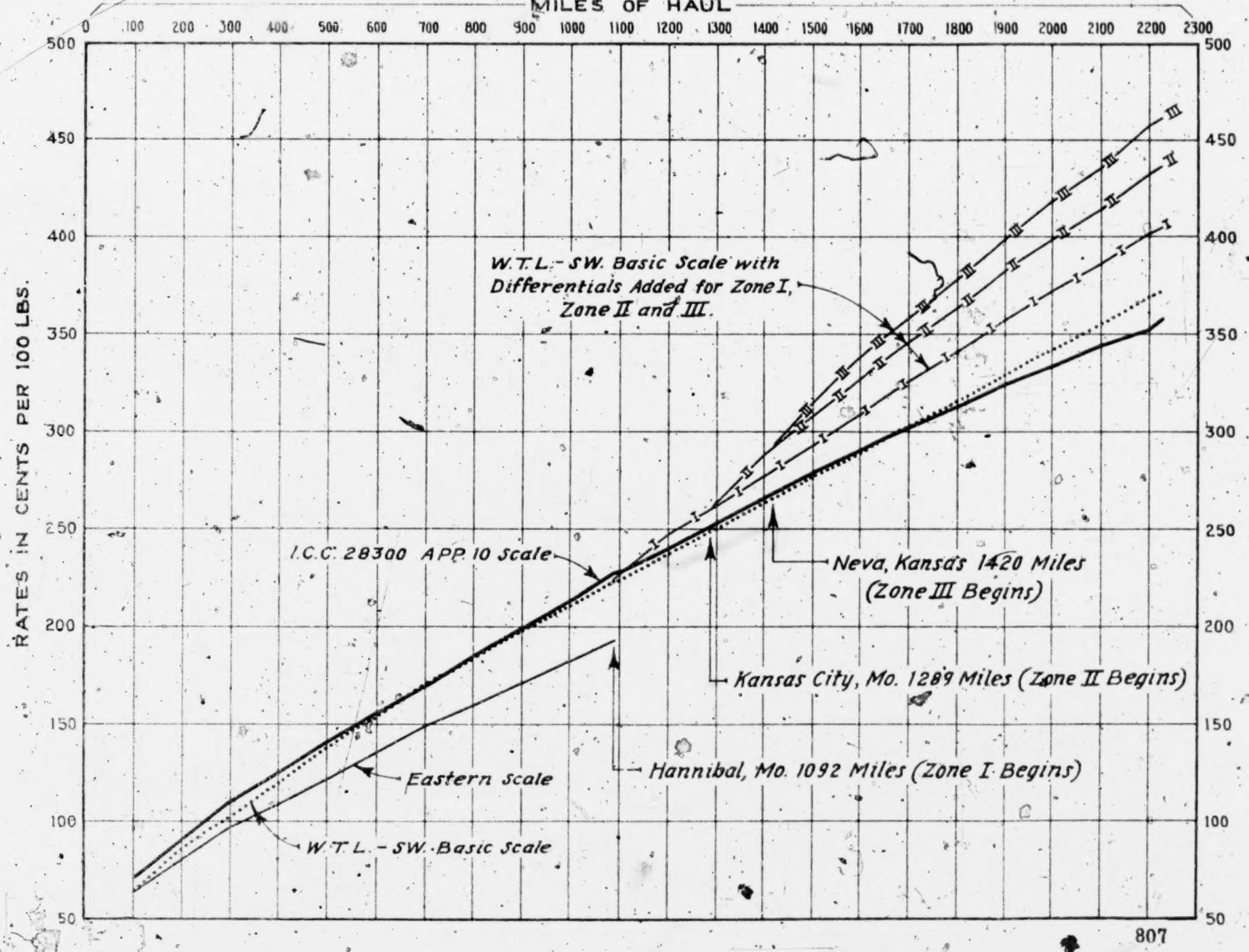
NOTE B—The "Extended" scale in Col. 2-A is made by using a diminishing rate of progression corresponding with that used in Appendix 10 for distances over 2000 miles.

740

COMPARISON OF CLASS 100 (FIRST CLASS) RATES IN SCALES INDICATED FROM 500 MILES EXTENDED TO 3000 MILES



COMPARISON OF CLASS 100 (FIRST CLASS) RATES FROM NEW YORK, N.Y. TO STATIONS ALONG THE RATE-MAKING ROUTE TO EL PASO, TEXAS MADE ON THE BASIS OF THE SCALES INDICATED



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742

Appendix F—Page 1

SHOWING RATES ON WOOL CARLOADS PRESCRIBED BY THE COMMISSION IN WOOL RATES INVESTIGATION, 1923 (91 ICC 235) FOR DISTANCES INDICATED COMPARED WITH THE CLASS 60, CLASS 55, AND CLASS 50 RATES PRESCRIBED IN PARTS I AND II OF ICC DOCKET 28300 DECIDED MAY 15, 1945

COL. 1	COL. 2	COL. 3	COL. 4	COL. 5	COL. 6	COL. 7	COL. 8	COL. 9
Miles	Commodity Rates WOOL RATES INV.		ICC 28300 (Note 2)			ICC 28300 (Note 3)		
	In Bags	In Bales	Class 60	Class 55	Class 50	Class 60	Class 55	Class 50
1500	147	125	167	153	139			
1600	158	134	174	160	145			
1700	168	143	181	166	151			
1800	179	152	188	172	157			
1900	189	161	194	178	162			
2000	200	170	200	184	167			
2100	208	176	206	189	172			
2200	216	184	212	194	177			
2300	225	191	217	199	181			
2400	232	198	221	202	184			
2500	242	206	225	206	188			
2600	250	212	229	210	191	229	210	191
2700	258	219	233	214	195	232	213	194
2800	265	225	238	218	198	235	216	196
2900	271	230	242	222	202	238	218	198
3000	277	235	246	226	205	239	219	200
3100	284	242	250	229	209	241	221	201

Note 1. Commodity rates in Cols. 2 and 3 include the 5% increase of 1938 (Ex parte 123).
Note 2. Rates in Cols. 4, 5 and 6 for distances over 2500 miles are made by using the same rate of progression as used in Appendix 10 scale for distance over 2300 miles.
Note 3. Rates in Cols. 7, 8 and 9 are made by using a diminishing rate of progression corresponding with that used in Appendix 10 for distances over 2000 miles.

SHOWING COMMODITY RATES ON PACKING HOUSE PRODUCTS CARLOADS PRESCRIBED BY THE COMMISSION IN MEATS AND PACKING HOUSE PRODUCTS (136 ICC 651) FOR DISTANCES INDICATED COMPARED WITH CLASS 37½ AND CLASS 35 RATES PRESCRIBED IN PART I AND PART II IN ICC DOCKET 28300 DECIDED MAY 15, 1945

Miles	P.H.P. Commodity Rates (Notes 1 & 2)	ICC 28300 Class 37½	ICC 28300 Class 35
(1)	(2)	(3)	(4)
100	35	26	25
200	48	34	32
300	57	41	39
400	65	47	44
500	71	53	49
600	76½	58	54
700	81	64	60
800	85	69	65
900	88	75	70
1000	91	80	75
1100	93	85	79
1200	98	90	84
1300	101	95	89
1400	104	100	93
1500	107	104	97
1600	110	109	102
1700	113	113	106
1750	115	116	108
1800	117	117	110
1900	120	122	113
2000	123	125	117
2100	126	129	120
2200	129	132	124
2300	132	135	126
2400	135	138	129
2500	139	141	131

Note 1. Commodity rates in Col. 2 include the 5% increase of 1938 (Ex parte 123).

Note 2. Commodity rates in Col. 2 for distances over 1750 miles are made on the basis of the same rate of progression as used for distances over 800 miles via 3 cents for each 100 miles over 1700 miles, plus 5% for general increase of 1938 (Ex parte 123).

Appendix F—Page 3

SHOWING COMMODITY RATES ON COAL TAR OR PITCH CARLOADS PRESCRIBED IN BARRETT CO. (172 ICC 319) FOR DISTANCES INDICATED COMPARED WITH THE CLASS 25 AND CLASS 22½ RATES PRESCRIBED IN PARTS I AND II IN ICC 28300 DECIDED MAY 15, 1945

1 Miles	2 Commodity Rates (Note 1)	3 ICC 28300 Class 25	4 ICC 28300 Class 22½
100	18	18	16
200	22	23	20
300	26	28	25
400	31	31	28
500	35	35	32
600	39	39	35
700	42	43	38
800	46	46	42
900	50	50	45
1000	53	53	48
1100	56	57	51
1200	60	60	54
1300	63	63	57
1400	67	67	60
1500	71	70	63
1600	74	73	65
1700	78	76	68
1800	81	78	70
1900	85	81	73
2000	88	84	75

Note 1. Commodity rates in Col. 2 include the 10% increase of 1938 (Ex Parte 123). This scale ends at 1200 miles but has been extended beyond this distance at the same rate of progression per 100 miles as used for distances beyond 700 miles.

STATEMENT SHOWING PRESENT CLASS RATES COMPARED WITH ICC 28300 SCALE. EXCEPT FOR HAULS IN MOUNTAIN PACIFIC TERRITORY THE SCALE HAS BEEN PLUSSED 15% FOR THE DISTANCE IN THAT TERRITORY. FOR DISTANCES BEYOND 2500 MILES THE SCALE HAS BEEN EXTENDED AT THE SAME RATE OF PROGRESSION AS BETWEEN 2300 AND 2500 MILES.

1—Present Rates.
2—28300 Scale Rates.

From	To		Miles: Through Short Line	Miles: In Mountain Pacific Territory	1st 100	2nd 85	3rd 70	4th 55	5th 37½	A 45	40	35	B 32½	C 30	D 22½	E 17½	Tariff Authority
York, N. Y.	Denver, Colo.	1			385	327	327	270	270	212	212	144	144	173	173	154	135	125	125	116	116	87	87	67	67	A
		2	1886		324		275		227		178		122		146	130	113		105		97		73		57	
	Salt Lake, Ut.	1			516	439	439	361	361	284	284	194	194	232	232	206	181	168	168	155	155	116	116	90	90	A
		2	2364	506	389		331		272		214		146		175	156	136		126		117		88		68	
	El Paso, Tex.	1			460	391	391	322	322	253	253	173	173	207	207	184	161	150	150	138	138	104	104	81	81	B
		2	2217		357		303		250		196		134		161	143	125		116		107		80		62	
	Los Angeles, Cal.	1			611	528		438		372		314		317				251		198		173		136		C
		2	2	867	439		373		307		241		165		198	176	154		143		132		99		77	
	Montline, N. D.	1			374	318	318	262	262	206	206	140	140	168	168	150	131	122	122	112	112	84	84	65	65	A
		2	1761		311		264		218		171		117		140	124	109		101		93		70		54	
	Harlowton, Mont.	1			466	396		326		256		175		210				151		140		105		82		A
		2	2094	334	361		307		253		199		135		162	144	126		117		108		81		63	
	Spokane, Wash.	1			578	497		411		330		276		259				228		184		171		136		D
		2	2617	840	415		353		291		229		156		187	166	145		135		125		93		73	
	Seattle, Wash.	1			611	528		438		372		314		317				251		198		173		136		D
		2	2889	1135	439		373		307		241		165		198	176	154		143		132		99		77	
burgh, Pa.	Denver, Colo.	1			332	282	282	232	232	183	183	125	125	149	149	133	116	108	108	100	100	75	75	58	58	E
		2	1451		275		234		193		151		103		124	110	96		89		83		62		48	
	Salt Lake, Ut.	1			459	390	390	321	321	252	252	172	172	207	207	184	161	149	149	138	138	103	103	80	80	E
		2	1929	506	351		298		246		193		132		158	140	123		114		105		79		61	
	El Paso, Tex.	1			404	343	343	283	283	222	222	152	152	182	182	162	141	131	131	121	121	91	91	71	71	B
		2	1789		313		266		219		172		117		141	125	110		102		94		70		55	
	Los Angeles, Cal.	1			594	512		429		363		305		309				244		194		166		131		C
		2	2537	867	408		347		286		224		153		184	163	143		133		122		92		71	
	Montline, N. D.	1			322	274	274	225	225	177	177	121	121	145	145	129	113	105	105	97	97	72	72	56	56	E
		2	1410		269		229		188		148		101		121	108	94		87		81		61		47	
	Harlowton, Mont.	1			416	354		291		229		156		187				135		125		94		73		E
		2	1744	334	325		276		228		179		122		146	130	114		106		98		73		57	
	Spokane, Wash.	1			528	455		378		309		260		267				211		171		158		131		D
		2	2255	840	390		332		273		215		146		176	156	137		127		117		88		68	
	Seattle, Wash.	1			594	512		429		363		305		309				244		194		166		131		D
		2	2553	1135	418		355		293		230		157		188	167	146		136		125		94		73	

STATEMENT SHOWING PRESENT CLASS RATES COMPARED WITH ICC 28300 SCALE.—Continued

1—Present Rates.
2—28300 Scale Rates.

From	To		Miles: Through Short Line	Miles: In Mountain Pacific Territory	1st 100	2nd	85	3rd	70	4th	55	5th	37½	A	45	40	35	B	32½	C	30	D	22½	E	17½	Tariff Authority
, Mich.	Denver, Colo.	1	....	....	309	263	263	216	216	170	170	116	116	139	139	124	108	100	100	93	93	70	70	54	54	E
		2	1270	....	250	...	213	...	175	...	138	...	94	...	113	100	88	...	81	...	75	...	56	...	44	
	Salt Lake, Ut.	1	....	....	483	368	368	303	303	238	238	162	162	195	195	173	152	141	141	130	130	97	97	76	76	E
		2	1742	506	329	...	280	...	230	...	181	...	123	...	148	132	115	...	107	...	99	...	74	...	58	
	El Paso, Tex.	1	....	....	384	326	326	269	269	211	211	144	144	173	173	154	134	125	125	115	115	86	86	67	67	B
		2	1689	....	296	...	252	...	207	...	163	...	111	...	133	118	104	...	96	...	89	...	67	...	52	
	Los Angeles, Cal.	1	....	....	578	501	....	416	....	355	....	290	....	300	....	....	....	234	....	190	....	154	....	122	....	C
		2	2380	867	397	...	337	...	278	...	218	...	149	...	179	159	139	...	129	...	119	...	89	...	69	
	Montline, N. D.	1	....	....	293	249	249	205	205	161	161	110	110	132	132	117	403	95	95	88	88	66	66	51	51	E
		2	1141	....	234	...	199	...	164	...	129	...	88	...	105	94	82	...	76	...	70	...	53	...	41	
	Harlowton, Mont.	1	....	....	388	330	....	272	....	213	....	146	....	175	....	....	....	126	....	116	....	87	....	68	....	E
		2	1475	334	292	...	248	...	204	...	161	...	110	...	131	117	102	...	95	...	88	...	66	...	51	
	Spokane, Wash.	1	....	....	503	434	....	362	....	299	....	251	....	257	....	....	....	204	....	162	....	152	....	122	....	D
		2	2069	840	371	...	315	...	260	...	204	...	139	...	167	148	130	...	121	...	111	...	83	...	65	
	Seattle, Wash.	1	....	....	578	501	....	416	....	355	....	290	....	300	....	....	....	234	....	190	....	154	....	122	....	D
		2	2367	1135	404	...	343	...	283	...	222	...	152	...	182	...	141	...	131	...	121	...	91	...	71	
o, Ill.	Denver, Colo.	1	....	....	279	237	237	195	195	153	153	105	105	126	126	112	98	91	91	84	84	63	63	49	49	F
		2	1016	....	217	...	184	...	152	...	119	...	81	...	98	87	76	...	71	...	65	...	49	...	38	
	Salt Lake, Ut.	1	....	....	399	339	339	279	279	219	219	150	150	180	180	160	140	130	130	120	120	90	90	70	70	G
			1476	506	299	...	254	...	209	...	164	...	112	...	135	120	105	...	97	...	90	...	67	...	52	
	El Paso, Tex.	1	....	....	351	298	298	246	246	193	193	132	132	158	158	140	123	114	114	105	105	79	79	61	61	H
		2	1372	....	263	...	224	...	184	...	145	...	99	...	118	105	92	...	85	...	79	...	59	...	46	
	Los Angeles, Cal.	1	....	....	561	487	....	404	....	342	....	284	....	293	....	....	....	229	....	182	....	151	....	119	....	C
		2	2120	867	376	...	320	...	263	...	207	...	141	...	169	150	132	...	122	...	113	...	85	...	66	
	Montline, N. D.	1	....	....	268	228	228	188	188	147	147	101	101	121	121	107	94	87	87	80	80	60	60	47	47	E
		2	966	....	210	...	179	...	147	...	115	...	79	...	95	84	74	...	68	...	63	...	47	...	37	
	Harlowton, Mont.	1	....	....	356	303	....	249	....	196	....	184	....	160	....	....	....	116	....	107	....	80	....	62	....	G
		2	1300	334	280	...	230	...	189	...	149	...	101	...	122	108	95	...	88	...	81	...	61	...	47	
	Spokane, Wash.	1	....	....	479	414	....	345	....	289	....	243	....	248	....	....	....	195	....	155	....	147	....	119	....	D
		2	1767	840	342	...	291	...	239	...	188	...	128	...	154	137	120	...	111	...	103	...	77	...	60	
	Seattle, Wash.	1	....	....	561	487	....	404	....	342	....	284	....	293	....	....	....	229	....	182	....	151	....	119	....	D
		2	2092	1135	380	...	323	...	266	...	209	...	143	...	171	152	133	...	124	...	114	...	86	...	67	

STATEMENT SHOWING PRESENT CLASS RATES COMPARED WITH ICC 28300 SCALE—Continued

1—Present Rates.
2—28300 Scale Rates.

From	To		Miles: Through Short Line	Miles: In Mountain Pacific Territory	1st 100	2nd	85	3rd	70	4th	55	5th	37½	A	45	40	35	B	32½	C	30	D	22½	E	17½	Tariff Authority
...sas City, Mo.	Denver, Colo.	1	....	....	222	189	189	155	155	122	122	83	83	100	100	89	78	72	72	67	67	50	50	39	39	I
		2	620	....	158	...	134	...	111	...	87	...	59	...	71	63	55	...	51	...	47	...	36	...	25	
	Salt Lake, Ut.	1	....	....	350	298	298	245	245	193	193	131	131	158	158	140	123	114	114	105	105	79	79	61	61	G
		2	1120	506	252	...	214	...	176	...	139	...	95	...	113	101	88	...	82	...	76	...	57	...	44	
	El Paso, Tex.	1	....	....	288	245	245	202	202	158	158	108	108	130	130	115	101	94	94	86	86	65	65	50	50	H
		2	936	....	207	...	176	...	145	...	114	...	78	...	93	83	72	...	67	...	62	...	47	...	36	
	Los Angeles, Cal.	1	....	....	495	429	...	363	...	303	...	260	...	264	...	...	...	204	...	157	...	138	...	108	...	C
		2	1684	867	331	...	281	...	232	...	182	...	124	...	149	132	116	...	108	...	99	...	74	...	58	
	Montline, N. D.	1	....	....	251	213	213	176	176	138	138	94	94	113	113	100	88	82	82	75	75	56	56	44	44	I
		2	819	....	189	...	161	...	132	...	104	...	71	...	85	76	66	...	61	...	57	...	43	...	33	
	Harlowton, Mont.	1	....	....	340	289	...	238	...	187	...	128	...	153	...	...	...	111	...	102	...	77	...	60	...	G
		2	1153	834	254	...	216	...	178	...	140	...	95	...	114	102	89	...	83	...	76	...	57	...	44	
	Spokane, Wash.	1	....	....	413	359	...	303	...	261	...	220	...	220	...	...	...	172	...	137	...	131	...	108	...	D
		2	1610	840	322	...	274	...	225	...	177	...	121	...	145	129	113	...	105	...	97	...	72	...	56	
	Seattle, Wash.	1	....	....	495	429	...	363	...	303	...	260	...	264	...	...	...	204	...	157	...	138	...	108	...	D
		2	1905	1135	363	...	309	...	254	...	200	...	136	...	163	145	127	...	118	...	109	...	82	...	64	

Tariff Authorities
A—ICC A-767 of W. S. Curlett, Agent
B—ICC 3592 of D. Q. Marsh, Agent
C—ICC 1489 of L. E. Kipp, Agent
D—ICC 1502 of L. E. Kipp, Agent
E—ICC 3766 of B. T. Jones, Agent
F—ICC A-2594 of L. E. Kipp, Agent
G—ICC A-3202 of L. E. Kipp, Agent
H—ICC 3527 of D. Q. Marsh, Agent
I—ICC A-2593 of L. E. Kipp, Agent

STATEMENT OF 1ST OR CLASS 100 RATES SHOWN IN APPENDIX G SHOWING REDUCTIONS IN CENTS AND THE PERCENT OF REDUCTION.

	NEW YORK CITY, N. Y.		PITTSBURGH, PA.		DETROIT, MICH.		CHICAGO, ILL.		KANSAS CITY, Mo.	
	Rate	%	Rate	%	Rate	%	Rate	%	Rate	%
ver, Colorado										
Present	385		332		309		279		222	
28300	324		275		250		217		158	
Reduction	61	15.8	57	17.2	59	19.1	62	22.2	64	28.8
t Lake City, Utah										
Present	516		459		433		399		350	
28300	389		351		329		299		252	
Reduction	127	24.6	108	23.5	104	24.0	100	25.1	98	28.0
Paso, Texas										
Present	460		404		384		351		288	
28300	357		313		296		263		207	
Reduction	103	22.4	91	22.5	88	22.9	88	25.1	81	28.1
Angeles, California										
Present	611		594		578		561		495	
28300	439		408		397		376		331	
Reduction	172	28.2	186	31.3	181	31.3	185	33.0	164	33.1
ntline, North Dakota										
Present	374		322		293		268		251	
28300	311		269		234		210		189	
Reduction	63	16.8	53	16.5	59	20.1	58	21.6	62	24.7
lowton, Montana										
Present	466		416		388		356		340	
28300	361		325		292		270		254	
Reduction	105	22.5	91	21.9	96	24.7	86	24.2	86	25.3
kane, Washington										
Present	578		528		503		479		413	
28300	415		390		371		342		322	
Reduction	163	28.2	138	26.2	132	26.2	137	28.6	91	22.0
ttle, Washington										
Present	611		594		578		561		495	
28300	439		418		404		380		363	
Reduction	172	28.2	176	29.6	174	30.1	181	32.3	132	26.7

Appendix I

STATEMENT SHOWING CARLOAD RATES ON MACHINERY TO SALT LAKE CITY, UTAH, AND LOS ANGELES, CALIFORNIA, AS COMPARED WITH 45% AND 40% OF THE ICC 28300 SCALE AS SHOWN ON APPENDIX G

	Salt Lake City, Utah				Los Angeles, Calif.			
	Present		28300 Scale		Present		28300 Scale	
FROM	Rate	Minimum	45	40	Rate	Mihimum	45	40
New York, N.Y.	232 213	24000 (1) 40000 (2)	175	156	254 213	30000 (2) 40000 (2)	198	176
Pittsburgh, Pa.	207 196	24000 (3) 40000 (2)	158	140	233 196	30000 (2) 40000 (2)	184	163
Detroit, Mich.	195 187	24000 (3) 40000 (2)	148	132	223 187	30000 (2) 40000 (2)	179	159
Chicago, Ill.	180 169	24000 (4) 40000 (5)	135	120	212 178	30000 (2) 40000 (2)	169	150
Kansas City, Mo.	158 152	24000 (4) 40000 (5)	113	101	191 161	30000 (2) 40000 (2)	149	132

(1) Class A—ICC A-767 of W. S. Curlett, Agent.
(2) Commodity Rate—ICC 1507 of L. E. Kipp, Agent.
(3) Class A—ICC 3766 of B. T. Jones, Agent.
(4) Class A—ICC A-3202 of L. E. Kipp, Agent.
(5) Commodity Rate—ICC A-3560 of L. E. Kipp, Agent.

Appendix J

STATEMENT SHOWING CARLOAD RATES ON AGRICULTURAL IMPLEMENTS COMPARED WITH 45% AND 40% OF FIRST CLASS RATES UNDER ICC DOCKET 28300 SCALE AS SHOWN ON APPENDIX G

TO	FROM NEW YORK, N. Y. Rate	Minimum	PITTSBURGH, PA. Rate	Minimum	DETROIT, MICH. Rate	Minimum	CHICAGO, ILL. Rate	Minimum	KANSAS CITY, MO. Rate	Minimum
Denver, Colo.										
Present	154	24000 (1)	133	24000 (5)	124	24000 (5)	112	24000 (8)	89	24000 (10)
"			124		113		98		71	
28300—45%			110		100		87		63	
28300—40%										
Salt Lake City, Utah										
Present	206	24000 (1)	184	24000 (6)	174	24000 (6)	161	24000 (11)	140	24000 (11)
"	187	44000 (2)	171	44000 (6)	163	44000 (6)	154	44000 (2)		
28300—45%	175		158		148		135		113	
28300—40%	156		140		132		120		101	
El Paso, Texas										
Present	207	24000 (3)	182	24000 (7)	173	24000 (7)	155	24000 (2)	115	24000 (12)
"	187	44000 (2)	171	44000 (2)	163	44000 (2)	154	44000 (2)		
28300—45%	161		141		135		118		93	
28300—40%	143		125		118		105		83	
Los Angeles, Calif.										
Present	243	24000 (2)	228	24000 (2)	220	24000 (2)	212	24000 (2)	189	24000 (2)
"	213	34000 (2)	196	34000 (2)	187	34000 (2)	178	34000 (2)	161	34000 (2)
"	187	44000 (2)	171	44000 (2)	163	44000 (2)	154	44000 (2)	154	44000 (2)
28300—45%	198		184		179		169		149	
28300—40%	176		163		159		150		132	
Monthine, N. D.										
Present	150	24000 (1)	129	24000 (5)	117	24000 (5)	107	24000 (8)	100	24000 (10)
28300—45%	140		121		105		95		85	
28300—40%	124		108		94		84		76	
Harlowton, Mont.										
Present	210	24000 (1)	187	24000 (7)	175	24000 (7)	146	24000 (9)	140	24000 (9)
"	187	44000 (4)	171	44000 (4)	163	44000 (4)				
28300—45%	162		146		131		122		114	
28300—40%	144		130		117		108		102	
Spokane, Wash.										
Present	243	24000 (4)	228	24000 (4)	220	24000 (4)	212	24000 (4)	189	24000 (4)
"	213	34000 (4)	196	34000 (4)	187	34000 (4)	178	34000 (4)	161	34000 (4)
"	187	44000 (4)	171	44000 (4)	163	44000 (4)	154	44000 (4)	154	44000 (4)
28300—45%	187		176		154		154		145	
28300—40%	166		156		137		137		129	
Seattle, Wash.										
Present	243	24000 (4)	228	24000 (4)	220	24000 (4)	212	24000 (4)	189	24000 (4)
"	213	34000 (4)	196	34000 (4)	187	34000 (4)	178	34000 (4)	161	34000 (4)
"	187	44000 (4)	171	44000 (4)	163	44000 (4)	154	44000 (4)	154	44000 (4)
28300—45%	176		188		182		171		163	
28300—40%	156		167		141		152		145	

(1) Class 40 ICC A-767 of W. S. Curlett, Agent.
(2) Commodity Rate ICC 1507 of L. E. Kipp, Agent.
(3) Class A ICC A-767 of W. S. Curlett, Agent.
(4) Commodity Rate ICC 1509 of L. E. Kipp, Agent.
(5) Class 40 ICC 3766 of B. T. Jones, Agent.
(6) Commodity Rate ICC 3141 of B. T. Jones, Agent.
(7) Class A ICC 3766 of B. T. Jones, Agent.
(8) Class 40 ICC A-2594 of L. E. Kipp, Agent.
(9) Commodity Rate ICC 1488 of L. E. Kipp, Agent.
(10) Class 40 ICC A-2593 of L. E. Kipp, Agent.
(11) Commodity Rate ICC A-3560 of L. E. Kipp, Agent.
(12) Class 40 ICC 3527 of D. Q. Marsh, Agent.

Appendix K

STATEMENT SHOWING CARLOAD RATES ON PASSENGER AUTOMOBILES FROM DETROIT, MICHIGAN, COMPARED WITH 75% OF 1ST CLASS PRESCRIBED IN ICC DOCKET 28190 ALSO WITH CLASS 100 UNDER ICC 28300 SCALE (APPENDIX G) AND 75% OF THOSE RATES.

To	Present Rate Commodity	1st Class	75% of 1st	ICC 28300 Scale	
				Class 100	75%
Denver, Colo.	229 (1)	309	232	250	188
Salt Lake City, Utah	328 (1)	433	325	329	247
El Paso, Tex.	355 (2)	384	288	296	222
Los Angeles, Cal.	450 (3)	578	434	397	298
Montline, N. D.	293 (4)	293	220	234	176
Harlowton, Mont.	366 (5)	388	291	292	219
Spokane, Wash.	450 (6)	503	377	371	278
Seattle, Wash.	450 (6)	578	434	404	303

(1) ICC 3592 of B. T. Jones.
(2) ICC 3522 of B. T. Jones.
(3) ICC 1507 of L. E. Kipp.
(4) ICC 3766 of B. T. Jones.
(5) ICC 1488 of L. E. Kipp and NYC ICC 244.
(6) ICC 1509 of L. E. Kipp.

Appendix L

STATEMENT SHOWING TYPICAL LESS THAN CARLOAD RATES TO SALT LAKE CITY, UTAH, AND LOS ANGELES, CALIFORNIA, ON ARTICLES CLASSIFIED AS FIRST-CLASS AS COMPARED WITH RATES UNDER ICC 28300 SCALE AS SHOWN IN APPENDIX G

	SALT LAKE CITY, UTAH		LOS ANGELES, CAL.	
	Present Rate	28300 Scale	Present Rate	28300 Scale
Boots and Shoes				
From New York, N. Y.	495 (1)	389	495 (1)	439
From Chicago, Ill.	399 (2)	299	413 (1)	376
From Kansas City, Mo.	350 (2)	252	372 (1)	331
Hosiery as described in Item 3995 of L. E. Kipp's ICC 1507				
From New York, N. Y.	413 (1)	389	413 (1)	439
From Chicago, Ill.	326 (1)	299	326 (1)	376
From Kansas City, Mo.	293 (1)	252	293 (1)	331
Clothing, etc., as described in Item 4000 of L. E. Kipp's ICC 1507				
From New York, N. Y.	516 (3)	389	528 (1)	439
From Chicago, Ill.	399 (2)	299	440 (1)	376
From Kansas City, Mo.	350 (2)	252	418 (1)	331

(1) ICC 1507 of L. E. Kipp.
(2) ICC A-3202 of L. E. Kipp.
(3) ICC A-767 of W. S. Curlett.

[fol. 819] IN THE DISTRICT COURT OF THE UNITED STATES

Civil Action No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

FORD K. EDWARDS, being first duly sworn, deposes and says that he is the Head Cost Analyst, Bureau of Transport Economics and Statistics, Interstate Commerce Commission; that he has made an examination of the evidence in the record of the proceedings before the Interstate Commerce Commission, known as Docket No. 28300, *Class Rate Investigation,* and Docket No. 29310, *Consolidated Freight Classification,* and of the Commission's reports and orders in the said proceedings, wherein and whereby an ad interim adjustment of class rates is prescribed; that, based upon such examination, it is his best judgment that if the said ad interim adjustment were to be prevented from remaining in force and effect the shippers entitled to reductions in accordance with the said order would be deprived of the benefit of the said reductions and would be required to pay large and substantial sums, in excess of the freight charges which would be due and payable by them under the said ad interim adjustment, and that the carriers entitled to [fol. 820] rate increases in accordance with the said order would be deprived of the benefits of the said increases, and would receive revenues substantially less than their revenues would have been if the said ad interim adjustment had remained in force and effect; and that, considering both the increases and the reductions in the revenues of the carriers affected by the order, the changes in the revenues on interstate traffic will be approximately $2,000,000 per month or $24,000,000 per year.

Ford K. Edwards.

Subscribed and sworn to before me this 12th day of December, 1945. J. Forney Donaldson, Notary Public. My commission expires September 14, 1948. (Seal.)

[fol. 821] IN THE DISTRICT COURT OF THE UNITED STATES

Civil Action No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

HARVEY P. SCHNEIBER, being duly sworn, deposes and says: That he is a duly appointed Special Attorney of the United States Department of Justice; that in the course of his official duties in such capacity he has made an examination of the Reports and Orders of the Interstate Commerce Commission issued in Docket No. 28300, *Class Rate Investigation,* and Docket No. 28310, *Consolidated Freight Classification,* and made an examination, on December 7 and 10, 1945, of official tariff files of the Interstate Commerce Commission.

That from said examination of the tariff files he ascertained therefrom that certain filings of tariffs and rate schedules have been made by common carriers or their tariff publishing agents, responsive to said Orders of the Interstate Commerce Commission, all of such schedules being filed to become effective January 1, 1946.

That the said tariff schedules so filed are enumerated in Appendix A, attached hereto and made a part hereof.

That from a representative check made of specific rates contained in the said tariffs and rate schedules it would appear that the rates named therein are in conformity with and pursuant to the said orders of the Interstate Commerce Commission.

That said examination of the official tariff files of the Interstate Commerce Commission further disclosed that [fol. 822] certain additional tariffs and rate schedules have been filed with the said Commission to become effective January 1, 1946, which were not filed responsive to said Orders of the said Commission but as collateral rate adjustments in harmony therewith.

That the said latter schedules so filed are enumerated in Appendix B, attached hereto and made a part hereof.

Harvey P. Schneiber.

Subscribed and sworn to before me this 12 day of December, 1945. Berl E. Lewis, Notary Public. (Seal.)

[fol. 823]

APPENDIX A

Rate Schedules Filed with the Interstate Commerce Commission to Become Effective January 1, 1946, Responsive to the Commission's Order in Docket No. 28300

The following tariffs or supplements thereto, naming class rates published to become effective January 1, 1946, have been filed with the Interstate Commerce Commission.

Tariff Publishing Agent	Tariff Application	ICC No.	Supplement No.
W. P. Emerson, Jr.	Louisiana	336	47 & 49
R. H. Hoke	Ark. & Miss.	322	114 & 115
R. H. Hoke	Ky. & Ohio River Crossings	513	129 & 130
R. H. Hoke	So. Carolina	516	109 & 110
R. H. Hoke	Va.-W. Va.	518	129 & 130
R. H. Hoke	Florida	519	113 & 114
R. H. Hoke	Alabama	710	75 & 76
R. H. Hoke	Georgia	712	83 & 84
R. H. Hoke	Eastern Ports—Southern	668	91 & 92
R. H. Hoke	No. Carolina	715	82 & 83
R. H. Hoke	Tennessee	717	86 & 87
W. S. Curlett	N. Y. & Vt. to Trunk Line Territory	A-331	142 & 143
W. S. Curlett	N. J. & N. Y. to Trunk Line Territory	A-332	132 & 133
W. S. Curlett	N. Y. & Penn. to Trunk Line Territory	A-333	136 & 137
W. S. Curlett	Md., N. J. & Penn. to Trunk Line Territory	A-334	139 & 140
W. S. Curlett	Md., N. Y. & Penn. to Trunk Line Territory	A-335	134 & 135
W. S. Curlett	Md., Penn. & W. Va. to Trunk Line Territory	A-336	138 & 139
[fol. 824]			
W. S. Curlett	Dist. of Col., Md., Va. & W. Va. to Trunk Line Territory	A-837	143 & 144
W. S. Curlett	Between N. Y., Ohio, Penn., Va. and Trunk Line Territory	A-755	38 & 39
W. S. Curlett	No. Car., Tenn., Va. & W. Va. to Trunk Line Territory	A-339	156 & 157
W. S. Curlett	Ky., Penn., Va. & W. Va. to Trunk Line Territory	A-340	146 & 147
W. S. Curlett	Between Trunk Line and New England Territories on the one hand and Southern Territory on the other	A-800	30 & 33
W. S. Curlett	From Trunk Line to C.F.A. Territory	A-766	31 & 32
W. S. Curlett	Lighterage & Terminal Regulations—N. Y. Harbor (class rate arbitraries)	A-788	87 & 88
W. S. Curlett	Trunk Line—New England Territories	A-744	40 & 41
W. S. Curlett	New York City—Trunk Line Territory	A-819	7 & 8
B. T. Jones	Between CFA and Southern Territories	3636	104

Appendix A

Rate Schedules Filed with the Interstate Commerce Commission to Become Effective January 1, 1946, Responsive to the Commission's Order in Docket No. 28300

The following tariffs or supplements thereto, naming class rates published to become effective January 1, 1946, have been filed with the Interstate Commerce Commission.

Tariff Publishing Agent	Tariff Application	ICC No.	Supplement No.
B. T. Jones	Between CFA and W.T.L. Territories	3766	86
B. T. Jones	Ohio to C.F.A. points	3779	28
B. T. Jones	Ohio to C.F.A. points	2445	209
B. T. Jones	Ky.; Ohio & W. Va. to C.F.A. points	2446	216
B. T. Jones	Ill., Ind. & Iowa to C.F.A. points	2447	211
B. T. Jones	Ill., Ky. & Mo. to C.F.A. points	2448	209
B. T. Jones	Ind. to C.F.A. points	3685	41
B. T. Jones	Ill., Ind. & Ky. to C.F.A. points	3355	91
B. T. Jones	Mich. to C.F.A. points	2451	216
[fol. 825]			
B. T. Jones	Mich. & Wis. to C.F.A. points	3425	74
B. T. Jones	N. Y., Ohio, Penn., W. Va. to C.F.A. Territory	3098	102
R. G. Raasch	I.F.A. to I.F.A. Territory	563	22 & 24
R. G. Raasch	I.F.A.—Southern points	485	171
I. N. Doe	Between New England Territory	497	12 & 13
I. N. Doe	Between New England Territory and N. J. & N. Y.	521	3 & 4
I. N. Doe	Between Maine and New England Territory	370	20 & 21
D. Q. Marsh	Between W.T.L. and Southwest on the one hand and Southwest on the other	3527	81
D. Q. Marsh	Between Southwest on the one hand and Colo. and Wyo. on the other	3552	36
D. Q. Marsh	Between Mo. & Miss. River Crossings & Kansas City, Kans.	3554	14
D. Q. Marsh	Between Southwest and Official Territory	3592	7 & 9
D. Q. Marsh	Between Southwest and Southern Territory	3571	56
L. E. Kipp	Between points in W.T.L. Territory	A-2592	150
L. E. Kipp	Between points in W.T.L. Territory	A-2593	137
L. E. Kipp	Between points in W.T.L. Territory	A-2594	136
L. E. Kipp	Between points in W.T.L. Territory	A-3402	29
L. E. Kipp	Between points in Iowa	A-3121	27
L. E. Kipp	Between Southern Territory and W.T.L. Territory	A-3020	131

[fol. 826]

Tariff Publishing Agent	Tariff Application	ICC No.	Supplement No.
L. E. Kipp	Between points in Nebr.	A-3437	47
L. E. Kipp	Between Kans. & Mo.	A-3582	4
L. E. Kipp	Between points in W.T.L. Territory	A-3418	48
L. E. Kipp	Minimum class rates between W.T.L. points & C.F.A. Territory	A-3609	
L. E. Kipp	Between points in Wisconsin	A-3309	54

Explanation of Territorial Abbreviations:
C.F.A.—Central Freight Association
I.F.A.—Illinois Freight Association
W.T.L.—Western Trunk Line

[fol. 827]

Appendix B

Rate Schedules Filed with the Interstate Commerce Commission to Become Effective January 1, 1946, Collateral to the Adjustment Prescribed by the Commission in Docket No. 28300 Which Have Been Voluntarily Filed with the Commission

The following tariffs or supplements thereto, naming class rates published to become effective January 1, 1946, have been filed with the Interstate Commerce Commission.

Tariff Publishing Agent (except as noted)	Tariff Application	ICC No. (except as noted)	Supplement No.
W. G. Oliphant	Barge-rail, rail-barge, and rail-barge-rail rates between Baton Rouge and New Orleans, La., Cairo, Ill., Helena, Ark., Memphis, Tenn., Mobile, Port Birmingham and Tuscaloosa, Ala., and Vicksburg, Miss., on the one hand and points in Ala., Fla., Ga., Ill., Ind., Ky., La., Miss., N. C., Ohio, S. C., Tenn., Va., and W. Va., on the other hand	A-5	30
"	Barge-rail, rail-barge and rail-barge-rail rates from Cairo, Chicago, E. Moline, East St. Louis, Moline, Peoria and Rock Island, Ill., Davenport, Ia., and St. Louis, Mo., to the same points	228	15
Dichman, Wright & Pugh, Inc. (carrier)	All-water rates between Washington, D. C., and Alexandria, Va., on the one hand and Old Point Comfort and Norfolk, Va., on the other hand	48	8
W. S. Curlett	Rail-Lake & Rail-Lake-Rail from Trunk Line to C.F.A. Territory	A-609	51
[fol. 828]			
R. G. Raasch	Lake and Rail, Rail-Lake & Rail, Lake-Rail and Motor, Rail-Lake-Rail and Motor from I.F.A. to Trunk Line and New England Territories	422	30 & 31
I. N. Doe	Rail-Water-Rail from New England Territory to Va. and W. Va.	391	15 & 16
Eastern Steamship Lines, Inc. (carrier)	Pick-up and Delivery Charges between points on Eastern Steamship Lines, Inc.	M.C. No. 18	16
"	Between points on Eastern Steamship Lines, Inc.	456	26
"	Between Trunk Line Territory and Va. Ports	ICC No. MF-B-43 (U.S.M.C. No. B-235)	12

Tariff Publishing Agent (except as noted)	Tariff Application	ICC No. (except as noted)	Supplement No.
"	Between New York, N. Y. and Alexandria, Va. & Wash., D. C.	ICC No. B-167 (U.S. M.C. No. B-232)	8
"	Between Trunk Line Territory and New England Territory and Va. ports	MF. ICC No. B-37 (U.S. M.C. No. B-228)	16
"	Between Va. ports and points in New England Territory	MF. ICC No. B-36 (U.S.M.C. No. B-227)	11
"	Between Eastern Ports & Va. ports	ICC No. B-157 (S.B. No. B-216)	14
"	From Va. Ports to Trunk Line & New England Territories	ICC No. B-161	10
"	Between Va. Ports and Trunk Line & New England points	ICC No. B-178	4
"	Between New York, N. Y. and Va. Cities	ICC No. B-164	10
"	Between Boston, Mass., Portland, Me. and N. J. & N. Y. points	MF. ICC No. 39 (MC-20)	16
[fol. 829]			
Merchants and Miners Transportation Company (carrier)	Between Va. ports and Boston, Mass. and Providence, R. I.	U.S.M.C. No. 66	14
"	Between Philadelphia, Pa. and Boston, Mass.	S.B. No. 1225	23
"	Between Va. and North Atlantic ports	S.B. No. 1226	11
"	Between Boston, Mass., Providence, R. I., and Va. ports	S.B. No. 1228	25
"	Between Baltimore, Md. and Newport News and Norfolk, Va.	ICC No. 1515	9
"	Between Baltimore, Md. and Boston, Mass., Providence, R. I.	ICC No. 1520	8
"	Between Boston, Mass., Providence, R. I. and Baltimore, Md., Norfolk, Va. and Wash., D. C.	ICC No. 1467	14
"	Eastern—Va. ports	ICC No. 1284	47
"	New England ports	ICC No. 1285	93
Mississippi Valley Barge Lines (carrier)	Between Tampa, Fla. and Ohio and Miss. River ports	ICC No. 71	10
"	Between Gulf Ports and Ohio and Miss. River ports	ICC No. 75	12

Explanation of Territorial Abbreviations:
C.F.A.—Central Freight Association
I.F.A.—Illinois Freight Association

[fol. 830] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT OF GLENN F. VIVIAN—Filed December 13, 1945.

STATE OF ILLINOIS,
County of Cook ss.

Glenn F. Vivian, being first duly sworn, deposes and says:

1. I am, and since 1937, have been manager of the Statistical Bureau—Western Lines, 416 Union Station, Chicago, Illinois. Said bureau was created and is supported and maintained by western railroads and its activities include making studies and preparing statistical data for the information of its constituent carriers and for use in hearings [fol. 831] before the Interstate Commerce Commission, various state regulatory bodies and the courts.

2. I am a graduate civil engineer from the University of Wisconsin, 1913, holding a degree of B.C.E. Prior to my entry into service with the Chicago, Milwaukee, St. Paul & Pacific Railroad (then the Chicago, Milwaukee & St. Paul Railway) on February 23, 1916, I was engaged in various types of construction work. During the period from February 23, 1916 to July 1, 1918, I occupied various positions as Special Clerk, Chief Clerk, Assistant Statistician, Acting Statistician and Statistician of the Chicago, Milwaukee & St. Paul Railway. During the period July 1, 1918 to March 1, 1920 I was engaged as Statistician of the northwestern region of the United States Railroad Administration, returning to Chicago, Milwaukee & St. Paul Railway on March 1, 1920 as Special Accountant and subsequently resuming my prior position as Statistician which I occupied to November 1, 1937, on which date I became Manager of the Statistical Bureau—Western Lines, Chicago, Illinois, my present position.

During my employment with the Chicago, Milwaukee, St. Paul & Pacific Railroad I was engaged in analytical work in the form of special studies of various types of operation, such as switching studies, line haul studies, studies of departmental functions, preparation of traffic analysis of various types, as well as analytical studies of varying char-

acter as to costs of operation of the various functions of railroads.

As Manager of the Statistical Bureau—Western Lines, it is my duty to arrange, prepare and present analytical studies of various kinds, particularly as to the costs of operation of railroads in the western district. In addition [fol. 832] to preparing analytical studies it is also necessary for me to keep currently advised as to the economic conditions in the United States, particularly in the western district, in order to estimate the possible trend in freight traffic. During the course of my railroad career I have been a member of various railroad committees, of operating, accounting and traffic officers, and am at present a member of the Committee on Statistics of the Association of American Railroads.

3. I appeared as a witness for western lines, respondents, in the hearing before the Interstate Commerce Commission, Class Rate Investigation, 1939, Docket No. 28300, and presented numerous statistical exhibits and testimony in connection therewith.

I am familiar with the record as adduced before the Interstate Commerce Commission in the Class Rate Investigation, 1939, and have analyzed the various cost studies and other statistical data introduced on behalf of various parties to the proceedings, including those exhibits and testimony introduced by representatives of the Interstate Commerce Commission.

4. In the Commission's report in *Class Rate Investigation, 1939*, 262 I.C.C. 447, at page 585, is shown a deficit in handling less-carload traffic in 1939, as to the railroads operating in the western territory, of $34,348,277, based on out-of-pocket cost plus adjusted solely related expenses, plus collection and delivery charges which for the western railroads in 1939 amounted to $115,038,109. The revenues derived from such less-carload traffic by the western railroads for 1939 was $88,797,938.

The Commission, in its report and order, requires that class rates applicable to, from and within the western district be reduced 10 per cent below those presently in effect. [fol. 833] Such reduction based on traffic moving on class rates in carload and less-carload will reduce western carriers revenue, based on traffic handled in 1941, approxi-

mately $6,029,928; based on traffic handled in 1942, approximately $8,136,620; based on traffic handled in 1943, approximately $9,482,087; based on traffic handled in 1944, approximately $9,969,081. This loss in revenue brought about by the reductions, prescribed by the Interstate Commerce Commission, in the class rates will be in addition to the deficit suffered by the western railroads in handling less-than-carload traffic which in 1939, as shown by the Interstate Commerce Commission's representative, amounted to $34,348,277.

Inasmuch as the Commission's investigation related solely to class rates there will be no opportunity for western lines' respondents to recoup any portion of the estimated losses resulting from the Commission's reports and by an adjustment of rates on traffic moving on rates other than class rates. Necessarily the revenue losses due to the reduction in class rates will depend entirely upon the amount of traffic moving on class rates. While it is impossible to estimate with any degree of accuracy the loss of revenue that will be suffered in 1946, or subsequent years, it is estimated that in no event will the loss be less than $5,000,000 plus, if the reduced class rates as prescribed become effective January 1, 1946, and remain in effect for that calendar year.

[fol. 834] Table 1. Shows for the Class I Railroads of the United States and the western district revenue tons one mile for the years 1941, 1942, 1943 and 1944 and also the first 8 months of 1941, 1944 and 1945. As the ton miles are the unit measure of freight work performed by the railroads, these figures indicate the quantity of freight service rendered. In this statement the ratios of subsequent years are shown to the year 1941. While ton miles for the United States show an increase of 55%, 1944 over 1941, the increase for the same period in the Western District was just short of 75%. Using the first eight months of 1941 as the base, the United States shows in the first eight months of 1945 an increase of 61.32% as compared with 90.72% for the West. In each of the comparisons shown the increase is greater in the West than in the United States.

Table 2. Shows total operating revenues, total operating expenses, including taxes and joint facility and equipment rents, and net railway operating income together with percentage relationship of expenses to revenues for Class I railroads of the United States for the same years and parts

of years as shown in Table 1. The percentage relationships between expenses and revenues shows the increasing portion of revenues required to meet the total expenses. During the year 1941, 81.33 cents of every dollar was required for expenses; during the first eight months of 1941, 80.85 cents of every dollar went for expenses. As revenues increased in 1942 this percentage dropped as would be expected to 80.12 cents out of the dollar. However, increased expenses of materials and supplies, wages, and taxes reversed the normally expended trend so that in 1944 expenses were 88.27% of revenues and in the first eight months of 1945 the expenses used 88.44 cents out of each dollar of [fol. 835] revenue.

Table 3. Shows similar information to that shown in Table 2, except that the figures refer to the Class I roads of the western district. These figures demonstrate that increasingly large portion of revenues are required to meet expenses in the western district and that the pattern follows closely the United States as a whole.

Table 4. Shows the operating revenues for the years and periods used in previous tables together with the amount of increase over 1941 and 8 months 1941 in absolute amounts and also expressed as ratios of the aforementioned base year and period. Comparing the western district with the United States, we find that the West has enjoyed a relatively greater percentage increase in operating revenues than has the United States as a whole.

Table 5. Shows the total expenses for the years and periods used in the preceding statements together with the amounts of increase after the base year and period expressed in absolute figures as well as in ratios to the base periods. This table, taken together with Table 4, demonstrates how much faster expenses are increasing than are revenues.

Railroads are heavy purchasers of materials and supplies which include fuel. Prices of these items have increased considerably over the years, and from indices of unit prices it is possible to ascertain the approximate increase in such prices one year compared with another. As shown in Table 6, the December, 1940 index was 1.67% over December, 1939; in December, 1941 it was 11.45%; in December, 1942 the increase was 16.60%; in December, 1943 it was 26.00%; and in December 1944 it was 28.58% over the index for 1939.

[fol. 836] Labor costs have increased considerably in the past few years. In the past five years the average rates which Class I carriers pay for straight time actually worked have increased more than 25 per cent over 1939. During 1940 and 1941 such increases were slight, however in 1942 the average hourly rate increased about 13% over 1939. In 1943 the increase was almost 21% and about 26% in 1944 over the average rate in 1939.

The railroads of the country are confronted with a demand for increases in salaries which are now the subject of negotiations. The non-operating employes are demanding an increase of 30 cents an hour; firemen, conductors and switchmen an increase of $2.50 a day; engineers and trainmen an increase of 25 per cent, with a minimum of $2.50 per day. On this basis and considering like increases to all railroad employes the increases will amount to $1,300,000,000 a year. In addition to a demand for wage increases the changes demanded in the operating rules will amount to an increased expense to the railroads of over $2,000,000,000 per year. Such economic trends have not been considered by the Interstate Commerce Commission in its determination of the issues involved in this proceeding.

Further affiant saith not.

Glenn F. Vivian.

Subscribed and sworn to before me this 12th day of December, A. D. 1945. A. F. Hucksold, Notary Public. My commission expires January 4, 1948.

[fol. 837]

TABLE 1

Revenue Tons One Mile—Class I Railroads of the United States and the Western District

	United States			Western District		
Year or Period	Revenue Ton Miles (000)	1941 = 100	Ratios 8 Months 1941 = 100	Revenue Ton Mile (000)	1941 = 100	Ratios 8 Months 1941 = 100
1941	475,053,822	100.00	.....	177,478,247	100.00	.....
8 Mos. 1941	299,074,206	.....	100.00	109,606,962	.....	100.00
1942	638,075,933	134.32	.....	249,727,000	140.71	.....
1943	727,003,427	153.04	.....	295,500,639	166.50	.....
1944	737,602,054	155.27	.....	309,604,268	174.45	.....
8 Mos. 1944	495,561,822	.....	165.70	203,904,561	.....	186.03
8 Mos. 1945	482,468,182	.....	161.32	209,047,192	.....	190.72

Source: I.C.C. Statements M-220 Revenue Statistics.

[fol. 838]

TABLE 2

Statement Showing Total Operating Revenues, Total Expenses and Net Railway Operating Income with Percent Expenses of Revenues
Class I Railroads of the United States

Year or Period	Total Operating Revenues	Total Expenses	Net Railway Operating Income	Percent Total Operating Expenses* of Total Operating Revenues
1941	$5,346,699,998	$4,348,413,290	$998,286,708	81.33
8 Mos. 1941	3,403,544,130	2,751,928,732	651,615,398	80.85
1942	7,466,227,054	5,981,757,403	1,484,469,651	80.12
1943	9,054,050,790	7,694,455,615	1,359,595,175	84.98
1944	9,435,446,955	8,328,915,145	1,106,531,810	88.27
8 Mos. 1944	6,281,293,192	5,527,636,784	753,656,408	88.00
8 Mos. 1945	6,251,217,314	5,528,539,160	722,678,154	88.44

* Total Operating Expenses including Taxes and Joint Facility and Equipment Rents.
Source: "Railway Revenues and Expenses, Railways of Class I in the United States," published by Bureau of Railway Economics.

[fol. 839]

TABLE 3

Statement Showing Total Operating Revenues, Total Expenses and Net Railway Operating Income with Percent Expenses of Revenues
Class I Railroads of the Western District

Year or Period	Total Operating Revenues	Total Expenses	Net Railway Operating Income	Percent Total Operating Expenses* of Total Operating Revenues
1941	$2,005,475,076	$1,634,536,950	$370,938,126	81.50
8 Mos. 1941	1,258,764,807	1,024,463,016	234,301,791	81.39
1942	2,974,508,666	2,319,337,483	655,174,183	77.97
1943	3,788,153,527	3,188,669,717	602,483,810	84.10
1944	4,020,428,648	3,532,370,425	488,058,223	87.86
8 Mos. 1944	2,634,597,178	2,320,929,322	313,667,856	88.09
8 Mos. 1945	2,739,472,598	2,415,872,498	323,600,100	88.19

* Total Operating Expenses including Taxes and Joint Facility and Equipment Rents.
Source: "Railway Revenues and Expenses, Railways of Class I in the United States," published by Bureau of Railway Economics.

[fol. 840]

TABLE 4

Statement Showing Total Operating Revenues for Selected Periods with Increases Expressed in Total Dollars and by Ratios—Class I Railroads of the United States and Western District

	Total Operating Revenues	Increase Over		Ratios	
		1941	8 Mos. 1941	1941 = 100	8 Mos. 1941 = 100
		United States			
1941	$5,346,699,998			100.00	
8 Months 1941	3,403,544,130				100.00
1942	7,466,227,054	2,119,527,056		139.64	
1943	9,054,050,790	3,707,350,792		169.34	
1944	9,435,446,955	4,088,746,957		176.47	
8 Months 1944	6,281,293,192		2,877,749,062		184.55
8 Months 1945	6,251,217,314		2,847,673,184		183.67
		Western District			
1941	$2,005,475,076			100.00	
8 Months 1941	1,258,764,807				100.00
1942	2,974,508,666	969,033,590		148.32	
1943	3,788,153,527	1,782,678,451		188.89	
1944	4,020,428,648	2,014,953,572		200.47	
8 Months 1944	2,634,597,178		1,375,832,371		209.30
8 Months 1945	2,739,472,598		1,480,707,791		217.63

Source: Tables 2 and 3 attached hereto.

[fol. 841]

TABLE 5

Statement Showing Total Expenses for Selected Periods with Increases Expressed in Total Dollars and by Ratios—Class I Railroads of the United States and Western District

	Total Operating Expenses	Increase Over		Ratios	
		1941	8 Mos. 1941	1941 = 100	8 Mos. 1941 = 100
		United States			
1941	$4,348,413,290			100.00	
8 Months 1941	2,751,928,732				100.00
1942	5,981,757,403	$1,633,344,113		137.56	
1943	7,694,455,615	3,346,042,325		176.95	
1944	8,328,915,145	3,980,501,855		191.54	
8 Months 1944	5,527,636,784		$2,775,708,052		200.86
8 Months 1945	5,528,539,160		2,776,610,428		200.90
		Western District			
1941	$1,634,536,950			100.00	
8 Months 1941	1,024,463,016				100.00
1942	2,319,337,483	$684,800,533		141.90	
1943	3,185,669,717	1,551,132,767		194.90	
1944	3,532,370,425	1,897,833,475		216.11	
8 Months 1944	2,320,929,322		$1,296,466,306		226.55
8 Months 1945	2,415,872,498		1,391,409,482		235.82

Source: Tables 2 and 3 attached hereto.

[fol. 842]

TABLE 6

Material and Supplies Cost—United States
December 1939 index 131.9—100.00%
December 1940 index 134.1—101.67%
December 1941 index 147.0—111.45%
December 1942 index 153.8—116.60%
December 1943 index 166.2—126.00%
December 1944 index 169.6—128.58%

Increase in Average Hourly Straight Time Rate—United States

	Average Hourly Straight Time Rate	Percent
1939	74.0 cents	100.00%
1940	74.2 cents	100.27%
1941	76.9 cents	103.92%
1942	83.5 cents	112.84%
1943	89.3 cents	120.67%
1944	93.0 cents	125.67%

Source: Dr. Parmelee's 1944 Review of Railway Operations.

[fol. 843] IN THE DISTRICT COURT OF THE UNITED STATES

Civil No. 2311

[Title omitted]

AFFIDAVIT OF RAYMOND E. BALDWIN, GOVERNOR OF THE STATE OF CONNECTICUT—Filed December 13, 1945

RAYMOND E. BALDWIN, being duly sworn, deposes and says that he is the duly elected and qualified Governor of the State of Connecticut and one of the six Governors of the New England States who have filed a petition for leave to intervene in the above-entitled proceedings; that he believes the following statement to be true:

If the orders of the Interstate Commerce Commission entered on May 15, 1945, and October 30, 1945, in the proceedings entitled respectively—Class Rate Investigation, 1939—and—Consolidated Freight Classification—numbered respectively Nos. 28300 and 28310 in the docket of said Commission are invalid and unlawful, and if they are not stayed pending final determination of this action and are not then annulled and their enforcement permanently enjoined, and if, under the compulsion of said orders, the railroads in Official Territory, including the railroads engaged in transportation within the New England States,

are permitted or required to or do increase their class [fol. 844] rates for interstate transportation, the citizens and communities of the six New England States will be discriminated against and will suffer great and irreparable injury in that, among other things, (1) the cost of doing business in each of the six New England States will be increased, (2) the increased cost of manufacturing and distributing goods in Official Territory will tend to restrict the free flow of such goods, to reduce employment, and substantially impair or destroy property values in each of the six New England States, (3) shippers in each of the six New England States will be required to pay increased class rates for the transportation of manufactured articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West, while at the same time they will be required to continue to pay substantially higher transportation charges for the transportation of their raw materials and other low-grade freight than the transportation charges paid by their competitors in other territories, and (4) shippers and receivers of freight in each of the six New England States will be required to pay higher freight charges than heretofore demanded by the railroads in such States or than justified by their transportation costs or other pertinent considerations in order that the class rates for transportation in the South and West may not be reduced more than 10 per cent, all of which will subject the citizens and communities of each of the six New England States to damage running into millions of dollars, for which they will have no means of relief or recoupment;

That his knowledge and information, upon which he rests his belief, are based upon records and information in his possession or in the possession of the State of Connecticut or coming to his attention in the performance of official [fol. 845] duties; and upon advice and information from counsel and officials of the State of Connecticut, The Commonwealth of Massachusetts and the States of Maine, New Hampshire, Vermont, Rhode Island and other states.

Raymond E. Baldwin.

Signed and sworn to before me this 11th day of December, 1945. Francis Wessell, Notary Public. (Seal.)

[fol. 846] IN UNITED STATES DISTRICT COURT

AFFIDAVIT—Filed December 13, 1945

STATE OF INDIANA,
Allen County, ss:

C. H. BARTELS, being first duly sworn, deposes and says that he is Traffic Manager of Bowser, Inc., Fort Wayne, Indiana, and that he is duly authorized in the premises.

Said Bowser, Inc. manufactures and sells gasoline filling station pumps, liquid meters, dry cleaning filters, oil filtering and reclamation machinery. Most of our purchasers reside and have their place of business in states other than Indiana. Sales to them are largely made in what is known as Official Territory and move entirely on class rates in both car-load and less-than-carload quantities.

Affiant is acquainted with the report of the Interstate Commerce Commission in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental orders issued in connection therewith. Affiant is also acquainted with the fact that the resultant 10 per cent increase in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states of Official Territory have joined as plaintiffs to an action seeking both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including said Bowser, Inc.

Said corporation of which affiant is Traffic Manager states that the costs of doing business in Official Territory will be increased, and that the increased costs of manufacturing and distributing goods in Official Territory will tend to restrict the free flow of said such goods, and to destroy property values in Official Territory.

[fol. 847] It will therefore cause irreparable loss and damage to said company if temporary relief by injunction is not granted from the present effective date of said report and orders pending final determination of said case on its merits.

C. H. Bartels.

Sworn to before me and subscribed in my presence this tenth day of December, 1945. Flora M. Brandt, Notary Public, Allen County, Indiana. My commission expires September 4, 1949. (Seal.)

[fol. 848] DISTRICT COURT OF THE UNITED STATES

No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

STATE OF INDIANA,
Marion County, ss:

ORA M. ENYART, being first duly sworn, deposes and says that he is Traffic Manager of the Van Camp Hardware and Iron Company, Indianapolis, Indiana, and that he is duly authorized in the premises.

Said Company buys and sells at wholesale hardware and iron, many of its purchasers and sellers of which reside and have their place of business in states other than Indiana. Sales and purchases by said Company are largely made in what is known as Official Territory and move on class rates in both car-load and less-carload quantity.

Affiant is acquainted with the report of the Interstate Commerce Commission in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental orders issued in connection therewith. Affiant is also acquainted with the fact that the resultant 10 per cent increase in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states in Official Territory have joined as plaintiffs to an action seeking both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including this said company.

[fol. 849] Affiant further says that if the orders of the commission are invalid and unlawful as alleged in the above entitled case and are not stayed pending final determination of this action, and the railroads are permitted or required to increase their class rates for interstate transportation 10 per cent, the Van Camp Hardware and Iron Company as shippers and as purchasers will suffer great and irreparable injury by reason of the additional freight charges for the reason that (1) the cost of doing business by this Company in Official Territory will be increased, (2) this Company will be required to pay increased class

rates for the transportation of articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West while at the same time this Company will be required to continue to pay substantially higher transportation charges for the transportation of their low grade freight than the transportation charges paid by their southern competitors, and (3) this Company will be required to pay higher freight charges than heretofore demanded by the railroads in that territory or than justified by their transportation costs or other pertinent considerations in order that the class rates for transportation in the South and West may not be reduced more than 10 per cent.

All of which will subject this Company to irreparable damage for which they will have no means of relief or recoupment.

It will therefore cause irreparable loss and damage to this Company if temporary relief by injunction is not granted from the present effective date of said report and orders pending final determination of this case on its merits.

Further affiant saith not,

Ora M. Enyart.

[fol. 850] Sworn to me and subscribed in my presence this 7 day of December, 1945. Agnes P. Brown, Notary Public, Marion County, Indiana. My commission expires: March 10, 1947. (Seal.)

[fol. 851] District Court of the United States

No. 2311

[Title omitted]

Affidavit—Filed December 13, 1945

State of Indiana,
Marion County, ss:

William L. Fogleson, being first duly sworn, deposes and says that he is Traffic Manager of the P. R. Mallory & Co., Inc., Indianapolis, Indiana, and that he is duly authorized in the premises.

That said Company manufactures and sells component parts for radio and electronics, condensers, switches, rectifiers, and dry batteries, many of its purchasers of which reside and have their places of business in states other than Indiana; that in the manufacture of said products this Company purchases large quantities of materials such as tungsten metal, beryllium, copper and zinc alloy articles; that said purchases are largely made interstate in what is known as Official Territory and move on class rates in both car-load and less-than-car-load quantities; that the total volume of sales of this Company is approximately $40,000,000.00 per year.

Affiant is acquainted with the report of the Interstate Commerce Commission in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental [fol. 852] orders issued in connection therewith. Affiant is also acquainted with the fact that the resultant 10 per cent increase in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states in Official Territory have joined as plaintiffs to an action seeking both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including this said company.

Affiant further says that if the orders of the commission are invalid and unlawful as alleged in the above entitled case and are not stayed pending final determination of this action, and the railroads are permitted or required to increase their class rates for interstate transportation 10 per cent, the P. R. Mallory & Co., Inc., as shippers and as purchasers will suffer great and irreparable injury by reason of the additional freight charges for the reason that (1) the cost of doing business by this Company in Official Territory will be increased since the 10 per cent increase in class freight rates will require this Company to spend additionally approximately $5,000.00 per year by virtue of its purchases. (2) this Company will be required to pay increased class rates for the transportation of articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West while at the same time this Company will be required to continue to pay substantially higher transportation charges for the transportation of

their low grade freight than the transportation charges paid by their southern competitors, and (3) this Company will be required to pay higher freight charges than heretofore demanded by the railroads in that territory or than justified by their transportation costs or other pertinent considerations in order that the class rates for transpor-
[fol. 853] tation in the South and West may not be reduced more than 10 per cent.

All of which will subject this Company to irreparable damage for which they will have no means of relief or recoupment.

It will therefore cause irreparable loss and damage to this Company if temporary relief by injunction is not granted from the present effective date of said report and orders pending final determination of this case on its merits.

Further affiant saith not.

Wm. L. Fogleson.

Sworn to before me and subscribed in my presence this 10 day of December, 1945. Lewis R. Tresler, Notary Public, Marion County, Indiana. My commission expires: 5/19/49. (Seal.)

[fol. 854] District Court of the United States

No. 2311

[Title omitted]

Affidavit—Filed December 13, 1945

Maurice D. Collins, being first duly sworn, deposes and says that he is Traffic Manager of E. C. Atkins and Co., Indianapolis, Indiana, and that he is duly authorized in the premises.

That said Company manufactures and sells saws and saw tools, and in connection therewith purchases large quantities of steel which are shipped from outside into the State of Indiana; that many of its purchasers reside and have their places of business in states other than Indiana; that said sales made by this Company are largely made in what is known as Official Territory, and that said

purchases of steel are also made within said Official Territory; that said sales move on class rates in less-than-carload quantities; that the total volume of sales of this Company is approximately $12,000,000.00 per year.

Affiant is acquainted with the report of the Interstate Commerce Commission in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental orders issued in connection therewith. Affiant is also acquainted with the fact that the resultant 10 percent increase [fol. 855] in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states in Official Territory have joined as plaintiffs to an action seeking both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including this said Company.

Affiant further says that if the orders of the commission are invalid and unlawful as alleged in the above entitled case and are not stayed pending final determination of this action, and the railroads are permitted or required to increase their class rates for interstate transportation 10 percent, E. C. Atkins and Co., as shippers and as purchasers will suffer great and irreparable injury by reason of the additional freight charges for the reason that (1) the cost of doing business by this Company in Official Territory will be increased since the 10 percent increase in class freight rates will require this Company to spend additionally the sum of approximately $600.00 per month by virtue of its shipments. (2) this Company will be required to pay increased class rates for the transportation of articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West while at the same time this Company will be required to continue to pay substantially higher transportation charges for the transportation of their low grade freight than the transportation charges paid by their southern competitors, and (3) this Company will be required to pay higher freight charges than heretofore demanded by the railroads in that territory or than justified by their transportation costs or other pertinent considerations in order that the class rates for transportation in the South and West may not be reduced more than 10 percent.

[fol. 856] All of which will subject this Company to irreparable damage for which they will have no means of relief or recoupment.

It will therefore cause irreparable loss and damage to this Company if temporary relief by injunction is not granted from the present effective date of said report and orders pending final determination of this case on its merits.

Further affiant saith not.

Maurice D. Collins.

Sworn to before me and subscribed in my presence this 10th day of December, 1945. James G. Martin, Notary Public, Marion County, Indiana. My commission expires 11/16/47. (Seal.)

[fol. 857] District Court of the United States

No. 2311

[Title omitted]

Affidavit—Filed December 13, 1945

Elliott S. Moore, being first duly sworn, deposes and says that he is Shipping Superintendent of the Radio Corporation of America, RCA Victor Division, Indianapolis, Indiana, and that he is duly authorized in the premises.

That said company manufactures and sells phonograph records, radio tubes, radio sets and industrial sound equipment, many of the purchasers of which reside and have their place of business in states other than Indiana; that sales by this company to such purchasers are largely made in what is known as Official Territory and move on class rates in both car-load and less-than-car-load quantities; that the total volume of sales by this company is approximately $45,000,000.00 per year.

Affiant is acquainted with the report of the Interstate Commerce Commision in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental orders issued in connection therewith. Affiant is also ac-

quainted with the fact that the resultant 10 percent increase in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states in Official Territory have joined as plaintiffs to an action [fol. 858] seeking both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including this said company.

Affiant further says that if the orders of the commission are invalid and unlawful as alleged in the above entitled case and are not stayed pending final determination of this action, and the railroads are permitted or required to increase their class rates for interstate transportation 10 percent, Radio Corporation of America, RCA Victor Division, as shippers and as purchasers will suffer great and irreparable injury by reason of the additional freight charges for the reason that (1) the cost of doing business by this Company in Official Territory will be increased since the 10 percent increase in class freight rates will require this Company to spend additionally approximately $15,000.00 per year by virtue of its shipments. (2) this Company will be required to pay increased class rates for the transportation of articles subject thereto which will be substantially on a parity with the reduced class rates prescribed for transportation within the South and West while at the same time this Company will be required to continue to pay substantially higher transportation charges for the transportation of their low grade freight than the transportation charges paid by their southern competitors, and (3) this Company will be required to pay higher freight charges than heretofore demanded by the railroads in that territory or than justified by their transportation costs or other pertinent considerations in order that the class rates for transportation in the South and West may not be reduced more than 10 percent.

All of which will subject this Comp ..y to irreparable damage for which they will have no means of relief or recoupment.

It will therefore cause irreparable loss and damage to [fol. 859] this Company if temporary relief by injunction is not granted from the present effective date of said report

and orders pending final determination of this case on its merits.

Further affiant saith not.

Elliott S. Moore.

Sworn to before me and subscribed in my presence this 10 day of Dec., 1945. Herschel G. Turner, Notary Public, Marion County, Indiana. My commission expires Sept. 4, 1946. (Seal.)

[fol. 860] DISTRICT COURT OF THE UNITED STATES

No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

Cooper C. Clifton, being first duly sworn, deposes and says that he is Director of the State Board of Public Printing of the State of Indiana, Indianapolis, Indiana, and that he is duly authorized in the premises; that the State Board of Public Printing is a department and agency of the sovereign State of Indiana.

That said State Board of Public Printing purchases for and on behalf of the State of Indiana, its departments and institutions printed matter, and office supplies, such as inks, writing paper, tablets, typewriter ribbons and tabulating cards and forms for machines; that its total purchases of such supplies average approximately $750,000.00 per year; that many of said items are purchased from sellers which reside and have their places of business in states other than Indiana; that purchases by this Board are largely made in what is known as Official Territory and move on class rates in usually less-than-car-load quantities.

Affiant is acquainted with the report of the Interstate Commerce Commission in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental orders issued in connection therewith. Affiant is also acquainted with the fact that the resultant 10 per cent increase in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states

[fol. 861] in Official Territory have joined as plaintiffs to an action seeking both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including this said Board.

Affiant further says that if the orders of the Commission are invalid and unlawful as alleged in the above entitled case and are not stayed pending final determination of this action, and the railroads are permitted or required to increase their class rates for interstate transportation 10 per cent, the State Board of Public Printing of the State of Indiana will suffer great and irreparable injury by reason of the additional freight charges since the costs of the purchases of this Board will be increased because the 10 per cent increase in class freight rates will be reflected in the increase of the prices of many of the goods purchased by this Board, all of which will subject this Board, and the State of Indiana to irreparable damage for which they will have no means of relief or recoupment.

It will, therefore, cause irreparable loss and damage to this Board, and to the State of Indiana if temporary relief by injunction is not granted from the present effective date of said report and order pending final determination of this case on its merits.

Further affiant saith not.

Cooper C. Clifton.

Sworn to before me and subscribed in my presence this 12 day of December, 1945. Frances M. Morgan, Notary Public, Marion County, Indiana. My commission expires: 7/23/49.

[fol. 862] District Court of the United States

No. 2311

[Title omitted]

Affidavit—Filed December 13, 1945

O. F. Heslar, being first duly sworn, deposes and says that he is Director of the Division of Procurement and Supply of Indiana, Indianapolis, Indiana, and that he is duly

authorized in the premises; that said Division is a department and agency of the State of Indiana and does most of the purchasing for the departments and agencies of the State of Indiana.

That said Division of Procurement and Supply purchases for and on behalf of the State of Indiana, its departments and institutions all of the materials and supplies necessary for their operation including textiles and dry goods, meats and groceries, machinery and heavy equipment, hospital and laboratory equipment and supplies, laundry equipment and supplies, paints, oils, leads and manufactured goods of many kinds and varieties; that the annual total purchases of this Division are approximately $2,500,000.00; that many of said items are purchased from sellers which reside and have their places of business in states other than Indiana and are shipped from places outside the State of Indiana; that purchases by this Division are largely made in what is known as Official Territory, many of which purchases move on class rates in usually less-than-car-load quantities.

[fol. 863] Affiant is acquainted with the report of the Interstate Commerce Commission in its cases docketed as Nos. 28300 and 28310, and with the ad interim order and supplemental orders issued in connection therewith. Affiant is also acquainted with the fact that the resultant 10 per cent increase in class freight rates in Official Territory proposed thereby is to become effective January 1, 1946. Affiant is further informed and therefore says that many, if not all, states in Official Territory have joined as plaintiffs to an action seeing both temporary and permanent relief from the report and orders aforesaid on behalf of themselves and of private shippers and manufacturers, including this said Division.

Affiant further says that if the orders of the Commission are invalid and unlawful as alleged in the above entitled case and are not stayed pending final determination of this action, and the railroads are permitted or required to increase their class rates for interstate transportation 10 per cent, the Division of Procurement and Supply of Indiana will suffer great and irreparable injury by reason of the additional freight charges since the costs of the purchases of this Division will be increased because the 10 per cent increase in class freight rates will be reflected

in the increase of the prices of the goods purchased by this Division, all of which will subject this Division, and the State of Indiana to irreparable damage for which they will have no means of relief or recoupment.

It will, therefore, cause irreparable loss and damage to this Division, and to the State of Indiana if temporary relief by injunction is not granted from the present effective date of said report and order pending final determination of this case on its merits.

Further affiant saith not.

O. F. Heslar.

Sworn to before me and subscribed in my presence this 13th day of December, 1945. Pauline H. Shumack, Notary Public, Hamilton County, Indiana. My commission expires: May 8, 1949.

[fol. 864] IN THE DISTRICT COURT OF THE UNITED STATES

No. 2311

[Title omitted]

AFFIDAVIT ON BEHALF OF THE STATE OF NEW JERSEY—Filed December 13, 1945

[fol. 865] STATE OF NEW JERSEY,
County of Mercer,
City of Trenton, ss:

Frank S. Farley, being duly sworn, deposes and says: That he is President of the Senate of the State of New Jersey and Acting Governor of the State of New Jersey;

That he has familiarized himself generally with the basic principles and issues involved in I. C. C. Docket No. 28300, *Class Rate Investigation, 1939*, and I. C. C. Docket No. 28310, *Consolidated Freight Classification*, to the extent and in the particulars that those proceedings have the attention of the Interstate Commerce Commission;

That he is generally familiar with the decision of the Interstate Commerce Commission resulting therefrom and has made a study relative to the effect thereof, particularly in so far as it relates to the State of New Jersey;

That, as a result of inquiry and study made by him, he is in a position to state personally that, if the aforesaid decision of the Interstate Commerce Commission shall be effectuated, the State of New Jersey, its citizens, communities and all components thereof, severally and jointly, shippers and receivers of freight, will suffer substantial and irreparable injury and damage, by reason of the fact that the State of New Jersey, its citizens, its communities and its commerce and industry will be required to pay excessive, unjust and unreasonable additional freight charges for the transportation of freight shipped by or for the said State, its citizens, its communities and its commerce and industry, or received by or for the said State, its citizens, its communities and its commerce and industry, to the extent that such freight moves or shall move on class rates between points and places in the State of New Jersey and from or to points and places in the State of New Jersey, on the one hand, and points and places located outside of the State of New Jersey in so-called Official ter- [fol. 866] ritory of the United States;

That the State of New Jersey, its citizens, its communities and its commerce and industry will suffer substantial damage, among other reasons, because the increase in the class rates aforesaid will tend to increase the cost of doing business in the State of New Jersey, by virtue of increasing the cost of moving freight inbound and outbound to and from points and places in Official territory, with the result that the ability of the New Jersey manufacturer to freely compete in existing markets for the purchase of raw materials and the sale of finished products will be greatly limited and curtailed; it will tend to make New Jersey less desirable to and for manufacturers and manufacture; it will tend to precipitate unemployment, by virtue of the closing of existing places of manufacture and the preclusion of expansion in existing manufacture; it will tend to reduce and otherwise destroy property values and taxables in the State of New Jersey, and will otherwise subject the State of New Jersey, its citizens, its communities and its commerce and industry to irreparable harm for which they now have or will have no remedy at law or otherwise;

That among the articles and products of trade so manufactured, shipped or received by the State of New Jersey,

its citizens, its communities and its commerce and industry, as introduced in evidence in the proceedings before the Interstate Commerce Commission, termed I.C.C. Docket No. 28300, *Class Rate, Investigation, 1939*, and I.C.C. Docket No. 28310, *Consolidated Freight Classification*, as a part of Exhibit No. 161, were and are the following nationally-known trade-marked items, many of which move to, from and within the State of New Jersey in substantial quantities, on railroad class rates:

L. E. CARPENTER & CO., Inc.

RONSON

Eightstown Rug Company

PEQUANOC RUBBER CO.

WESTINGHOUSE

ELECTRIC ELEVATOR COMPANY

MAGNETIC PIGMENT COMPANY

Sears, Roebuck and Co.

ART METAL WORKS, Inc.

THE ATHENIA STEEL CO.

LEHN & FINK PRODUCTS CORPORATION

SOLEO PAINT & CHEMICAL CO.

E. R. SQUIBB & SONS

THE LUZERNE RUBBER COMPANY

A.H.&S.

A. HOLLANDER & SON

J. W. BEARDSLEY'S SONS

ESSEX RUBBER COMPANY

Princeton Worsted Mills, Inc.

Kraeuter & Company, Inc.

(Pronounced Kroyter)

FORSTMANN WOOLEN CO

L. O. KOVEN & BROTHER, Inc.

MERCER RUBBER COMPANY

J. B. Van Sciver Co.

REGAL DOLL CORPORATION

The American Platinum Works

GIBRALTAR CORRUGATED PAPER CO., INC

JOSEPH DIXON CRUCIBLE CO.

ANCHOR HOCKING GLASS CORPORATION

The Whitehead Bros. Rubber Co.

ROLLER BEARING COMPANY OF AMERICA

PHELPS DODGE COPPER PRODUCTS CORPORATION

ATLAS STEEL BARREL CORPORATION

ANDREW McLEAN COMPANY

THE RIVERSIDE METAL COMPANY

PURITAN RUBBER MANUFACTURING COMPANY

HEYDEN CHEMICAL CORPORATION

ANACONDA

INTERNATIONAL SMELTING AND REFINING COMPANY

RARITAN COPPER WORKS

BECTON DICKINSON & CO

THE RIVERSIDE METAL COMPANY

PURITAN RUBBER MANUFACTURING COMPANY

HEYDEN CHEMICAL CORPORATION

ANACONDA

INTERNATIONAL SMELTING AND REFINING COMPANY
RARITAN COPPER WORKS

BECTON DICKINSON & CO

ARCHER-DANIELS-MIDLAND COMPANY

THE HAMERSLEY MANUFACTURING CO.

GF

GENERAL FOODS CORPORATION

R.M. HOLLINGSHEAD CORPORATION

THE NATIONAL LOCK WASHER COMPANY

FEDERAL SHIPBUILDING COMPANY

FLORENCE PIPE FOUNDRY & MACHINE CO.

AMERICAN SMELTING AND REFINING COMPANY

CONTINENTAL CAN COMPANY, INC.

BAKER & CO., INC.

SCAMMELL CHINA CO.

Maas and Waldstein Co

LINDE AIR PRODUCTS

HAMILTON RUBBER MANUFACTURING COMPANY

MERCK & CO.

HIGH GRADE

OVERMAN CUSHION TIRE COMPANY, INC.

ART COLOR PRINTING COMPANY

867

WRIGHT AERONAUTICAL CORPORATION

L. A. Young Spring & Wire Corp.

ROBINS

CALLITE

DAVIS BAKING POWDER

KELLOGG

Johnson & Johnson

IRVINGTON INSULATION

Lehigh Valley Railroad

GE

EAGLE EP PENCILS

SOSS INVISIBLE HINGES

MUELLER

INCO MONEL

Waterman's Ideal Fountain Pen

DEVOE PAINTS

AMERTRAN

General Cigar Co., Inc.

LA PALINA

BAKELITE

THE DERBY CITY PRINTING COMPANY

DIEHL MANUFACTURING CO

WALKER-TURNER

BETHLEHEM STEEL COMPANY

NEW YORK SHIPBUILDING CORPORATION

Nichrome

The American Tobacco Company
INCORPORATED

THE H. A. WILSON CO.

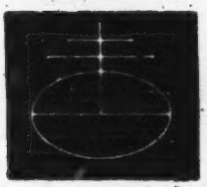
Metal & Thermit Corp.

Beautyrest

HYATT
ROLLER BEARING

NOPCO

ALCOA
ALUMINUM



Gaylord Bond

GOETZE GASKET
& PACKING CO., INC.

PUROLATOR
THE OIL FILTER

EDISON BATTERIES

Lackawanna
Railroad

T&B THE THOMAS & BETTS CO., Inc.

COLGATE

BELLMAN BROOK BLEACHERY CO.

Office and Plant
FAIRVIEW
NEW JERSEY

Mack

PANELYTE

JM Johns-Manville

Lee

Western Electric Company

Goodyear
RUBBER CO.

CELLULOID CORPORATION

Home Rubber Co.

A.W. FABER

Acme
RUBBER MANUFACTURING CO.

Quality
BUILT
U.S.A.

THE LINEN THREAD COMPANY
INCORPORATED 1898

PURVEYORS OF PURE WATER
HW&S

Val-A-Pak
"Traveling Wardrobe"

JACK FROST
GRANULATED
SUGAR

CROCKER-WHEELER

Wenczel
TILES

ECLIPSE

H&D

Ridgelo
CLAY COATED

OWENS - ILLINOIS
INSULUX Glass Block

AJAX

ANACIN

TASTYEAST

THE HINDE & DAUCH PAPER CO.

Calcc

Walter Kidde & Company

MUNDET CORK

LENOX

W. AMES & CO.

ISOLANTITE

CONGOLEUM RUG

Wheatena

BORDEN'S ASSOCIATED COMPANIES

Borden's 1857

S. B. PENICK & COMPANY

NATIONAL

RU-BER-OID

CONSOLIDATED FILM INDUSTRIES, INC.

Certain-teed

Magnus CLEANERS

NATIONAL BATTERIES

Cocomalt

MALTED FOOD DRINK

WOR

AMERICAN GAS FURNACE CO.

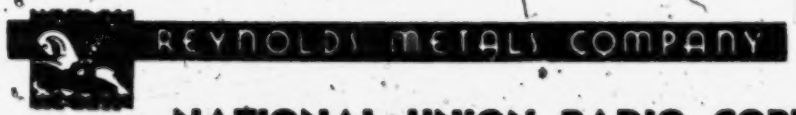
The A P Smith Mfg Co.

PITTSBURGH PLATE GLASS COMPANY

LIONEL

Kaywoodie Pipes

ALCO-GRAVURE



NATIONAL UNION RADIO CORP.

GENERAL

MOTORS Campbell's SOUPS

ANACIN

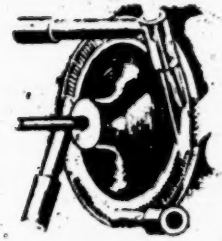
TASTYEAST

THE KINDE & DAUCH PAPER CO.

Calco

GERA MILLS

DE LAVAL



BOTANY WORSTED MILLS PASSAIC N J

WF

TRADE MARK

Thomas A Edison

Van Raalte

WARREN FOUNDRY & PIPE CORP.

Permutit

WORTHINGTON

TRADE MARK

TITANOX

AMERICAN RADIATOR & Standard Sanitary

THE MANHATTAN RUBBER MFG. DIV.

MANHATTAN

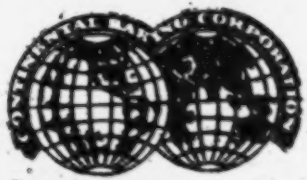
PASSAIC N.J.

THE WATSON-STILLMAN CO.

HOFFMANN-LA ROCHE inc.

WALKER-TURNER

BETHLEHEM STEEL COMPANY



Feen-a-mint
THE CHEWING GUM
LAXATIVE

Delco-Remy

JOHN WALDRON CORP

BEST FOODS - HELLMANN'S

WESTON

CRUCIBLE STEEL COMPANY

868

UNITED STATES PIPE AND FOUNDRY COMPANY
AMERICAN LEAD PENCIL COMPANY
BALDWIN-HILL CO.
UNITED
COLORS & PIGMENTS
REFRACTORY
CARBORUNDUM
PRODUCTS
DU PONT
Walker Gordon
CERTIFIED
MUNDT
THE B MANISCHEWITZ CO
Dugan's
"Bakers for the Home"
New
Jersey
Central
TEXACO
MONROE
Esso
WARD BAKING COMPANY
Bakers
UNITED STATES RUBBER COMPANY
US
TRADE MARK
COVER THE EARTH
CITIES
SERVICE
AMERICAN CYANAMID COMPANY
PRODUCTS
PURITY
BODY
FLAVOR
SHELL

WAITT & BOND, INC.

AMERICAN COLORTYPE COMPANY

HOMASOTE

OKONITE

THE JOHNSTON & MURPHY SHOE

WILSON WJ JONES

SOLAR

Murphy Varnish Company

EGYPTIAN SUPERIOR LACQUERS

L. J. Wing Mfg. Co.

OTIS ELEVATOR

EVEREADY

PRESTONE

KEUFFEL & ESSER CO.

Boker

Breyers

RYERSON CERTIFIED STEELS

Hill

Reading Tires

BAKER'S COCOA

ROSSOTTI Lithographing

Old Gold

HOFFMAN Beverage Company

DRINK Coca-Cola

R. HOE & CO., INC. NEW YORK & LONDON

AIRCO

[fol. 874] and that substantial movements of the items immediately before enumerated are shipped to, from and between points and places in the State of New Jersey on class rates, which class rates are subject to increases in so far as they apply, to, from and between points in Official territory, by virtue of the order of the Interstate Commerce Commission as aforesaid.

Frank S. Farley.

Subscribed and sworn to before me this 12th day of December, 1945. Robert Peacock, Master, in Chancery, of N. J.

[fol. 875] State of New Jersey,
County of Camden, ss:

Henry W. Peterson, being duly sworn, upon his oath says that the South Jersey Port Commission is authorized by the Legislature of the State of New Jersey to exercise the powers of the South Jersy Port District, and that he is and has been Secretary of the said Commission since April 1, 1943; and that he has made diligent inquiry of manufacturers and business people in the South Jersey Port District, composed of the counties of Mercer, Burlington, Camden, Gloucester, Cumberland, Salem and Cape May, relative to the injurious effects of the ten percent increase in class rates to or within New England Territory, Trunk Line Territory, Central Freight Association Territory, and Illinois Freight Association Territory, which is scheduled to become effective January 1, 1946.

The deponent further states that he has made telegraphic and telephonic inquiry of a number of shippers and receivers of the South Jersey Port District, and that he is and has learned that specific industries would be adversely affected if the ten percent increase in class rates in the north and a ten percent reduction in class rates in and from the south were permitted to become effective.

The deponent further says, in response to his inquiries:

That the Sloane-Blabon Corporation, manufacturers of floor coverings at Trenton, New Jersey, advises that they anticipate that the order under Docket No. 28300 would result in net added costs on their outbound shipments of

$37,815, and on inbound shipments, $22,735, per year, and that these figures would be doubled when their postwar expansion program is completed; that their entire outbound shipments move under class rates and fifty percent of their inbound raw material also moves under class rates;

[fol. 876] That the Riverside Metal Company at Riverside, New Jersey, advises that the ten percent increase in class freight rates would make it difficult for them to meet competition from St. Louis;

That F. F. East, Incorporated, Maurice River, New Jersey, packers and shippers of oysters and representative of the fifty-million-dollar oyster industry in South Jersey, which firm ships opened oysters in gallon cans as far as Minneapolis, Chicago, Denver and other points, advise that they protest the order as discriminating, because southern dealers in the same line offer strong competition and such rates would destroy their sales so that they would not be able to meet their competition, their present competition being Norfolk, Virginia, although New Orleans, Louisiana, shippers are becoming very active in the markets now served by South Jersey oystermen;

That the Paulsboro Manufacturing Company, manufacturers of felt base floor coverings at Paulsboro, New Jersey, advises that, with selling prices frozen at 1941 levels and labor and material costs substantially increased, any further increase on incoming or outgoing freight would be a serious handicap and a definite interference with their reconversion program;

That the Mannington Mills, Incorporated, at Salem, New Jersey, manufacturers of felt base floor covering, advise that the ten percent increase would injure their business;

That the Gayner Glass Works at Salem, New Jersey, manufacturers of glassware, advise that, while their shipments of glassware and their receipts of raw material all move on exceptions to the class rates, nevertheless they believe that numerous customers of theirs will be adversely affected, and that this will indirectly affect them;

[fol. 877] That Henry Clay and Bock and Company, Limited, manufacturers of high-grade Havana cigars at Trenton, New Jersey, advise that they will be injured by competition from Tampa, Florida, and cite an example of a competitive angle by stating that less carload second class rate cigars from Trenton, New Jersey, to Pittsburgh, Pennsylvania, will be increased from 90¢ to 99¢ whereas same

asis from Tampa, Florida, to Pittsburgh, Pennsylvania, ill be reduced from $2.46 to $2.21, thus reducing the pres- nt spread from $1.56 to $1.22, making a 21.8 percent reduc- ion in favor of the Tampa shippers; but that their car- oad rate on Havana leaf from Tampa, Florida, ex Cuba, o Trenton, New Jersey, will continue at $1.17 cwt. repre- enting class 45K, because these cars move on exceptions ating and are not accorded the Interstate Commerce Com- ission's ten percent ordered reduction from the south to fficial Territory;

That the W. L. Hurley Company, operators of the largest epartment store in the Camden, New Jersey, area, advises hat they are receivers of a considerable amount of freight rom all sections of the country and, as the Office of Price dministration has already ruled that they may not con- ider freight charges as part of their cost of merchandise, hey have had to absorb those charges which amount to a onsiderable item of expense; and that they therefore most mphatically protest against any further increase which ould add to the already difficult job of producing a profit;

That the Belber Trunk and Bag Company in Woodbury, ew Jersey, manufacturers of trunks and luggage and do- ng business on a national scale, advises that a substantial ortion of their business is done in the major cities of New ngland and in New York City, and that one of their rincipal competitors is the American Hardware Company f Petersburg, Virginia, an amalgamation of seventeen runk and luggage manufacturing companies, which last-
[fol. 878] named firm is one of the largest in the luggage ndustry and is extremely tough competition because of wer wage scales existing in the south, and that if, in ddition to the wage advantage, they were allowed a twenty ercent differential in class rates on merchandise shipped nto the north, it would be practically impossible for Belber o compete, and that that would result in a very substantial oss to Belber, the only industry in the City of Woodbury, ew Jersey;

That the Camden Pottery (located at Camden, New Jer- ey), a division of the Universal Sanitary Manufacturing ompany, manufacturers of vitreous china plumbing fix- ures, advises that they certainly cannot stand a ten percent ncrease unless the Office of Price Administration permits hem to increase their prices and pass the advance on to the onsumer.

The RICHARDSON COMPANY

Singer

LISTERINE
TOOTH PASTE

Swift's
Premium

Sloane Blabon

CANCO

Castanea

RR

STANDARD
INSULATION
Makes Motors Better

Stokely's
finest foods

Oxweld

Bond

Elastic Stop
SELF LOCKING
NUTS

ALLEN B. DU MONT LABORATORIES, INC.

WILBUR B DRIVER CO
NEWARK NEW JERSEY

ATF

Thermoid

Benjamin Moore & Co.

REYNOLDS SPRING COMPANY

THE BEATTIE MANUFACTURING CO.

Spry

P.O.N.

KOPPERS
COKE

ROEBLING

Samuel Hird & Sons, Inc.

872

The STAR PORCELAIN COMPANY

Security STEEL

Flood & Conklin Co.

CLOROX

AMERICAN CHAIN & CABLE COMPANY, Inc.

FOSTER WHEELER

BENDIX

YARDLEY

The deponent further states that, through his inquiries, he has learned that many other shippers and receivers using class rates in the South Jersey Port District would be adversely affected, such as:

E. Pritchard, Bridgeton, New Jersey, canner of tomato products, soups, asparagus, and jellies;

Minot Food Packers, Incorporated, at Bridgeton, New Jersey, packers of cranberry sauce, potato salad and fruit juices;

P. J. Ritter Company, Bridgeton, New Jersey, canners of catsup, baby desserts, pork and beans, etc.;

Owens-Illinois Glass Company with plants at Bridgeton, Glassboro, and Berlin, New Jersey, manufacturers of glass containers and insulators;

Ferracute Machine Company, Bridgeton, New Jersey, manufacturers of presses and press brakes;

Martin Dyeing and Finishing Company, Bridgeton, New Jersey, engaged in the dyeing and finishing of cotton and linen goods;

[fol. 879] Baccelliere Manufacturing Company, Berlin, New Jersey, manufacturers of fruit presses, crushers, production cheese graters and household specialties;

Edgar F. Hurff Company at Swedesboro, New Jersey, canners of tomato products, soups, pork and beans, asparagus, pumpkin, baby food, hominy, potato stix and dog food;

The National Waterproofing Company, Incorporated, Camden, New Jersey, manufacturers of asphalt laminated papers, asphalt coated papers, asphalt impregnated papers, waxed papers and oiled papers;

C. T. C. Industries, Incorporated, Camden, New Jersey, manufacturers of waterproof paper bags and waterproof paper containers;

The Better Bilt Door Company at Egg Harbor, New Jersey;

R. M. Hollingshead Corporation, Camden, New Jersey, manufacturers of automotive chemical products, lubricants, industrial maintenance supplies and household chemical products;

and many other industries too numerous to list individually.

The deponent further states that Himmelein and Bailey, Incorporated, at Camden, New Jersey, tanners and finishers

of leather, transmission leather belting and other leather products, advise that their strongest competitors are in the south; that they bring green salted hides from Omaha and Chicago to Camden and then ship some of these hides to Salem or Blue Ridge in Virginia, or to Boston, Massachusetts, for tanning, while others are tanned locally; but that the tanning and preparation of leather require a great deal of rail shipping, and increases which they have already had to meet make their margin of profit so narrow that they are now preparing to move their production facilities into one of the southern states in order to be able to continue in business.

The deponent further says that, by virtue of his investigation into the effects of the proposed increase in class rates, he has learned that most of the large manufacturers and [fol. 880] industries are not concerned about the effect because their commodities move on commodity or exception rates, but that there are, however, no industries or manufacturers whose products do not eventually move under class rates from small distributors to retail stores supplying the ultimate consumer, and that, in the deponent's opinion, if the increase in class rates were to become effective, the result would be an increase in the general over-all cost of living, by reason of the fact that food products, clothing, furniture, medicines and other necessities of life are all items which move under class rates before reaching the general public.

Henry W. Peterson, Secretary; South Jersey Port Commission. (Seal.)

Sworn to and subscribed before me this 11th day of December, 1945. Calvin E. Parker, Notary Public. Notary Public of New Jersey. My Commission Expires Nov. 10, 1946. (Seal.)

[fol. 881] STATE OF NEW JERSEY,
County of Camden, ss:

HENRY W. PETERSON, being duly sworn, says that he resides at 559 Delaware Street in the City of Woodbury, County of Gloucester, State of New Jersey, and that he is the President of Council of the City of Woodbury. He further states that, as such, he has inquired of the manufacturers

and business people of said City relative to the effect of the ten per cent increase in class rates which is scheduled to go into effect on January 1, 1946; and that he has found that the one industry in the City would be seriously and adversely affected if the ten per cent increase in class rates were permitted to become effective, this industry, The Belber Trunk and Bag Company, Woodbury, New Jersey, Manufacturers of luggage, traveling bags and other leather and canvas goods, having strong competition from producers in southern states who would receive a ten per-cent reduction while Belber would have a ten percent increase.

The deponent further says that the consuming public would be the eventual sufferers, since any increases in cost of transportation are ultimately passed on to the individual purchasers.

The deponent still further says that the proposed increase will be reflected in the cost of food, clothing, furniture, medicines and other necessities of living, the Office of Price Administration notwithstanding, if people are to continue to operate small businesses on a profitable basis.

The deponent prays that the Court hearing the plea of the Attorney General of the State of New Jersey will grant the injunction sought.

Henry W. Peterson, President of Council, City of Woodbury, New Jersey.

Sworn to and subscribed before me this 11th day of December, 1945. Calvin E. Parker, Notary Public. Notary Public of New Jersey. My commission expires Nov. 10, 1946. (Seal.)

[fol. 882] State of New Jersey,
County of Camden, ss:

Alfred Rhodes, of full age, being duly sworn according to law, on his oath says,

That he is treasurer and general manager of C. T. C. Industries, Inc., a corporation created under the laws of the Commonwealth of Pennsylvania, with its principal office and manufacturing plant in the City of Camden, State of New Jersey.

Said company is engaged in the manufacture and sale of water-proof bags and liners and has a large patronage and a considerable investment in its plant. It has just received notice that it is the intention of the Interstate Commerce Commission to increase freight rates to or within New England territory, Trunk Line territory, Central Freight Association territory and Illinois Freight Association territory. Such an increase would affect incoming and outgoing shipments as this corporation markets its merchandise throughout the area mentioned, and, if such rates are increased, it will seriously affect the cost of the company's product and result in a sharp competition in sales upon which there is a very narrow margin of profit.

This corporation has its plant adjoining that of the National Water-proofing Company in the City of Camden, New Jersey, and during the war supplied the Government with a large amount of its product and during the recon-
[fol. 883] struction period expects to increase the volume of its business.

In view of these facts the proposed increase of such freight rates, if made, will seriously injure the company's business and will lessen the company's ability to pay taxes as presently or which may hereafter be assessed.

Such an increase should not be made at this time as it will substantially burden and affect the flow of commerce and suppress the earning power of the company.

Alfred Rhodes.

Sworn and subscribed before me this eleventh day of December, A. D. 1945.

Wm. Claxton Jones, Master in Chancery of New Jersey.

[fol. 884] State of New Jersey,
County of Camden, ss:

S. Elwood Griffth, of full age, being duly sworn according to law, on his oath says,

That he is vice-president of National Water-proofing Company, a corporation of the State of New Jersey, with its principal office at Front and Beckett Streets, Camden, in said state.

Said company is engaged in the manufacture of waterproof papers and allied products and has just received notice that it is the intention of the Interstate Commerce Commission to increase class freight rates to or within New England territory, Trunk Line territory, Central Freight Association territory and Illinois Freight Association territory.

Such an increase would affect incoming and outgoing shipments as this corporation markets its merchandise throughout the area mentioned, and, if such rates are increased, it will seriously affect the cost of the company's product and result in a sharp competition in sales upon which there is a very narrow margin of profit.

The National Waterproofing Company does a large business and depends to a great extent on volume. It maintains and operates a plant in Camden, New Jersey, in which there is a considerable investment and during the war its plant was used almost exclusively for the manufacture of its product for the Government; and during the reconstruction period will undoubtedly have an increased business over war years.

[fol. 885] In view of these facts the proposed increase of such freight rates, if made, will seriously injure the company's business and will lessen the company's ability to pay taxes as presently or which may hereafter be assessed.

Such an increase should not be made at this time as it will substantially burden and affect the flow of commerce and suppress the earning power of the company.

S. Elwood Griffth.

Sworn and subscribed before me this eleventh day day of December. Wm. Claxton Jones, Master in Chancery of New Jersey.

[fol. 886] DISTRICT COURT OF THE UNITED STATES

No. 2311

[Title omitted]

AFFIDAVIT—Filed December 13, 1945

J. W. BARTON, being first duly sworn, deposes and says that he is Superintendent of Purchases and Printing for the State of Ohio. In his official capacity he frequently and steadily purchases, for the various departments and officials of the State of Ohio many commodities which move on class rates, both car-load and less-car-load, in interstate commerce.

Affiant is acquainted with the fact that many, if not all, states in Official Territory have joined as plaintiffs in an action seeking both temporary and permanent relief from the report, ad interim order, and subsequent related orders of the Interstate Commerce Commission in its cases docketed 28300 and 28310, one of the results of which is to increase class freight rates 10 percent in Official Territory and to reduce such rates 10 percent in the south and west as of January 1, 1946.

If the orders of such Commission are invalid and unlawful as alleged by the plaintiffs in that action, and if they are not stayed pending final determination of that action and are not then annulled and their enforcement permanently enjoined, and if the railroads in Official Territory are permitted or required under compulsion of said orders to increase their class rates for interstate transportation 10 percent, industries will suffer great and irreparable injury by reason of such additional freight charges running into many million of dollars for which they will have no means of relief or recoupment and they will be discriminated against in that, among other things, the cost of doing business in Official Territory will be increased and that in turn will tend to restrict the free flow of goods, will stimulate unemployment, and will destroy property values in Official Territory and such shippers and receivers of freight will be required to pay higher freight rates than heretofore demanded by the railroads in that territory or

than are justified by the transportation costs or other pertinent considerations.

Further affiant saith not.

J. W. Barton.

Sworn to before me and subscribed in my presence this 8th day of December, 1945. Eula C. Fisher, Notary Public, Franklin County, Ohio. My commission expires Jan. 22, 1948. (Seal.)

[fol. 887] DISTRICT COURT OF THE UNITED STATES

[Title omitted]

No. 2311

AFFIDAVIT—Filed December 15, 1945

Robert L. Moulton, being first duly sworn, deposes and says that he is Director of the Department of Commerce of the State of Ohio, and that in his official capacity he has constant contact with and frequent supervision over shippers both public and private who buy or sell commodities moving to and from the State of Ohio in interstate commerce on class freight rates.

Affiant is acquainted with the fact that many, if not all, states in Official Territory have joined as plaintiffs in an action seeking both temporary and permanent relief from the report, ad interim order, and subsequent related orders of the Interstate Commerce Commission in its cases docketed 28300 and 28310, one of the results of which is to increase class freight rates 10 per cent in Official Territory and to reduce such rates 10 per cent in the south and west as of January 1, 1946.

If the orders of such Commission are invalid and unlawful as alleged by plaintiffs in that action, and if they are not stayed pending final determination of that action and are not then annulled and their enforcement permanently enjoined, and if the railroads in Official Territory are permitted or required under compulsion of said orders to increase their class rates for interstate transportation 10 per cent, industries will suffer great and irreparable injury by reason of such additional freight charges running into

many millions of dollars for which they will have no means of relief or recoupment and they will be discriminated against in that, among other things, the cost of doing business in Official Territory will be increased and that in turn will tend to restrict the free flow of goods, will stimulate unemployment, and will destroy property values in Official Territory and such shippers and receivers of freight will be required to pay higher freight rates than heretofore demanded by the railroads in that territory or than are justified by the transportation costs or other pertinent considerations.

Further affiant saith not.

(Signed) Robert L. Moulton.

Sworn to before me and subscribed in my presence this 10 day of December, 1945. (Signed) Martha Okey, Notary Public, Franklin County, Ohio. Comm. expires 2-26-47.

[fol. 888] District Court of the United States

[Title omitted]

No. 2311

Affidavit—Filed December 15, 1945

Maurice T. Otto, being first duly sworn, deposes and says that he is Traffic Manager of the Dayton Chamber of Commerce. Many members of that Association, as well as many other industries in Montgomery County which are not members thereof, purchase and sell in interstate commerce a great variety of commodities moving on class freight rates, both car-load and less-car-load.

Affiant is acquainted with the fact that many, if not all, states in Official Territory have joined as plaintiffs in an action seeking both temporary and permanent relief from the report, ad interim order, and subsequent related orders of the Interstate Commerce Commission in its cases docketed 28300 and 28310, one of the results of which is to increase class freight rates 10 per cent in Official Territory and to reduce such rates 10 per cent in the south and west as of January 1, 1946.

If the orders of such Commission are invalid and unlawful as alleged by plaintiffs in that action, and if they are not stayed pending final determination of that action and are not then annulled and their enforcement permanently enjoined, and if the railroads in Official Territory are permitted or required under compulsion of said orders to increase their class rates for interstate transportation 10 per cent, such industries will suffer great and irreparable injury by reason of such additional freight charges running into many millions of dollars for which they will have no means of relief or recoupment and they will be discriminated against in that, among other things, the cost of doing business in Official Territory will be increased and that in turn will tend to restrict the free flow of goods, will stimulate unemployment, and will destroy property values in Official Territory and such shippers and receivers of freight will be required to pay higher freight rates than heretofore demanded by the railroads in that territory or than are justified by the transportation costs or other pertinent considerations.

Further affiant saith not.

Maurice T. Otto.

Sworn to before me and subscribed in my presence this 8th day of December, 1945. (Signed) Elwood E. Zimmer, Notary Public, Montgomery County, Ohio, in and for Montgomery County, O. My Commission Expires Aug. 21, 1948. (Seal).

[fol. 889] District Court of the United States

[Title omitted]

No. 2311

Affidavit—Filed December 15, 1945

Andrew H. Brown, being first duly sworn, deposes and says that he is Transportation Commissioner and Commerce Counsel of the Cleveland Chamber of Commerce. Many members of that Association, as well as many other industries in Cuyahoga County which are not members thereof, purchase and sell in interstate commerce a great

variety of commodities moving on class freight rates, both car-load and less-car-load.

Affiant is acquainted with the fact that many, if not all, states in Official Territory have joined as plaintiffs in an action seeking both temporary and permanent relief from the report, ad interim order, and subsequent related orders of the Interstate Commerce Commission in its cases docketed 28300 and 28310, one of the results of which is to increase class freight rates 10 per cent in Official Territory and to reduce such rates 10 per cent in the south and west as of January 1, 1946.

If the orders of such Commission are invalid and unlawful as alleged by plaintiffs in that action, and if they are not stayed pending final determination of that action and are not then annulled and their enforcement permanently enjoined, and if the railroads in Official Territory are permitted or required under compulsion of said orders to increase their class rates for interstate transportation 10 per cent, such industries will suffer great and irreparable injury by reason of such additional freight charges running into many millions of dollars for which they will have no means of relief or recoupment and they will be discriminated against in that, among other things, the cost of doing business in Official Territory will be increased and that in turn will tend to restrict the free flow of goods, will stimulate unemployment, and will destroy property values in Official Territory and such shippers and receivers of freight will be required to pay higher freight rates than heretofore demanded by the railroads in that territory or than are justified by the transportation costs or other pertinent considerations.

Further affiant saith not.

(Signed) Andrew H. Brown.

Sworn to before me and subscribed in my presence this 10th day of December, 1945. (Signed) Randall M. Ruhlman, Notary Public, Cuyahoga County, Ohio, 400 Union Commerce Bldg., Cleveland 14, Ohio. My commission expires March 31, 1948. (Seal).

[fol. 890] IN THE DISTRICT COURT OF THE UNITED STATES

[Title omitted]

Civil No. 2311

ACKNOWLEDGMENT OF SERVICE—Filed December 15, 1945

The undersigned hereby acknowledges service this date of a copy of the Court's order, signed by Judge Stephen W. Brennan, dated December 3, 1945, whereby Judge Brennan calls to his assistance to constitute the special court, as prayed for in plaintiffs' petition, as required by law, Honorable Harrie B. Chase, Judge of the United States Circuit Court of Appeals for the Second Circuit, and Honorable John C. Knox, Judge of the United States District Court for the Southern District of New York.

Service is also acknowledged on this date of a copy of the order to show cause in the above proceeding, dated December 5, 1945, giving notice of hearing on plaintiffs' petition for an interlocutory injunction, to be held before the Court constituted as above stated at the United States Court House, in Room 110, in the City of New York, on the 13th day of December, 1945, at 2:00 o'clock in the afternoon, and requiring defendant at said time to show cause why the interlocutory injunction prayed for should not issue.

Dated: December —, 1945.

Wendell Berge, For defendant, The United States of America.